IMPLEMENTING THE CONVENTION FOR THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAW

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 1446

A BILL TO AMEND TITLE 18, UNITED STATES CODE, TO IMPLEMENT THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL, AND FOR OTHER PURPOSES

MARCH 24, 1982

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IMPLEMENTING THE CONVENTION FOR THE PHYSICAL PROTECTION OF NUCLEAR MATERIALS

WEDNESDAY, MARCH 24, 1982

U.S. Senate,
Subcommittee on Criminal Law,
Committee on the Judiciary,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:07 a.m., in room 5110, Dirksen Senate Office Building, Senator Charles McC. Mathias, Jr. (chairman of the subcommittee) presiding.

Staff present: Ralph Oman, counsel; Grace Rienhoff, chief clerk; Linda Colancecco, legislative aide, Subcommittee on Criminal Law; and Kevin Mills, counsel, Subcommittee on Juvenile Justice.

OPENING STATEMENT OF SENATOR CHARLES McC. MATHIAS, JR.

Senator Mathias. The subcommittee will come to order.

Today, the Criminal Law Subcommittee will consider Senate bill 1446, a bill to implement the Convention for the Physical Protection of Nuclear Material. This bill has also been referred to the Subcommittee on Security and Terrorism, and I had hoped that the chairman of that subcommittee, the Senator from Alabama, Mr. Denton, would be able to join us today, but, unfortunately, his schedule will not permit it.

Last summer, the chairman of the Committee on Foreign Relations, Senator Percy, joined in introducing Senate bill 1446. The Convention that this bill implements establishes an international framework for improving the physical protection of nuclear material when it is shipped between countries, as well as improving international cooperation for the recovery of stolen material.

The Convention was originally proposed by the Secretary of State in 1974 and was subsequently called for by the Congress in the Nuclear Nonproliferation Act of 1978. It was adopted in October of 1979 at the last of the four negotiating meetings held over 3 years in Vienna between representatives of 58 States and organizations.

The first six articles of the Convention establish guidelines for the physical security of nuclear materials being shipped internationally and for appropriate national action in the event of the theft or sabotage of nuclear material. The remaining articles define the specific offenses related to the theft or sabotage of nuclear materials that each country would write into its own domestic criminal law.

This bill implements these eight articles by amending title 18 of the United States Code to provide a maximum fine of $250,000 and/or imprisonment of up to 20 years for the offenses that are specified by the Convention.

Technically, these offenses would include the actual, attempted or threatened theft, or sabotage, of nuclear material, first, either in or in transit to or from an area under the jurisdiction of the United States; second, by a United States national; or, third, by a foreign national abroad, but who is present in the United States.

The Convention was originally submitted to the Senate in August of 1980. Thirty nations and organizations, including the United States, have already signed the agreement, and the Senate ratified it on July 30, 1981. To give this agreement the enforcement powers intended, we must adopt this implementing legislation or we will be powerless to act against nuclear terrorists. The Convention has been carefully negotiated and equal care has been taken in drafting the language of this implementing legislation.

[Senate bill 1446 follows:]

II

97TH CONGRESS
1ST SESSION

S. 1446

To amend title 18, United States Code, to implement the Convention on the Physical Protection of Nuclear Material, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 8, 1981

Mr. MATHIAS (for himself and Mr. PERCY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, to implement the Convention on the Physical Protection of Nuclear Material, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Act for the Implementation of the Convention on the Physical Protection of Nuclear Material".

SEC. 2. Title 18, United States Code, is amended by inserting after chapter 69 thereof the following new chapter:

“Chapter 70.—NUCLEAR MATERIALS

Sec.
“1445. Prohibited transactions involving nuclear materials.

“(a) Whoever intentionally—

“(1) receives, possesses, uses, transfers, alters, disposes, or disperses any material in fact containing plutonium or uranium in combination or otherwise without lawful authority which act causes or is likely to cause death or serious injury to any person or substantial damage to property;

“(2) commits a theft or robbery of any such material;

“(3) embezzles any such material or obtains any such material by fraud;

“(4) attempts to commit any of the foregoing offenses;

“(5) conspires to commit any of the foregoing offenses, if any act to effect the object of the conspiracy is done;

“(6) demands such material by threat or use of force or by any other form of intimidation; or

“(7) threatens—

“(A) to use any such material to cause death or serious injury to any person or substantial property damage; or

"(B) to commit an offense described in paragraph (a)(2) of this section in order to compel action or inaction by a natural or legal person, international organization, the United States or a foreign government or any political subdivision within those governments—

shall be fined not more than $250,000 or imprisoned not more than twenty years, or both.

"(b) There is Federal jurisdiction over an offense described in this section if:

"(1) the offense is committed in any area under the jurisdiction of the United States, including any of the places within the provisions of sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(38));

"(2) the offense is committed by a national of the United States;

"(3) the material containing the plutonium or uranium concerned was in use, storage, or transport for peaceful purposes and the alleged offender is present within the United States; or

"(4) the material containing the plutonium or uranium concerned was at the time of the offense in shipment via any mode—

"(A) to the United States; or

"(B) from the United States and had not arrived at a facility of the receiver within the country of ultimate destination.

"(c) For the purpose of this section—

"(1) 'foreign government' and 'international organization' shall have the same meanings as those provided in section 1116(b) of this title;

"(2) 'national of the United States' means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States;

"(3) 'plutonium' means plutonium with an isotopic concentration not in excess of 80 per centum plutonium 238; and

"(4) 'uranium' means—

"(A) uranium not in the form of ore or ore-residue that contains the mixture of isotopes as occurring in nature;

"(B) uranium that contains the isotope 235 or 233 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

"(C) uranium 233.

"(d) In the course of enforcement of this section—

"(1) the Attorney General may request assistance from any Federal, State, or local agency, including the Army, Navy and Air Force, any statute, rule, or regulation to the contrary nothwithstanding, and

"(2) the Federal Bureau of Investigation shall investigate all alleged or suspected violations of this chapter.".

SEC. 3. Paragraph 1116(b)(5) of title 18, United States Code, is amended by inserting the following before the period at the end thereof "or a public organization created pursuant to treaty or other agreement under international law as an instrument through or by which two or more foreign governments engage in some aspect of their conduct of international affairs".

SEC. 4. The analysis of part I, title 18, United States Code, is amended by inserting after the entry therein for chapter 69 the following new item:

"70. Nuclear Materials.".

Senator **Mathias**. Today's witnesses have a great deal of expertise on the subject of nuclear material, and I know that their contributions will help to establish an informative base and a valuable record for the subcommittee.

The first witness will be Ambassador Richard T. Kennedy, the Under Secretary of State for Management; but before Secretary Kennedy testifies, I might introduce into the record a letter that I have received from Ambassador Gerard C. Smith with reference to this matter. And because of his long involvement in nuclear questions, I believe that his comments are useful and I will place them in the record. He says, in part: "I can personally attest to the importance of putting in place measures to improve our ability to deal with crimes related to nuclear material. I, therefore, strongly support prompt enactment of the implementing legislation."

[The letter of Mr. Smith follows:]

The Consultants International Group, Inc.,
Washington, D.C., February 22, 1982.

Hon. Charles McC. Mathias, Jr.,
Chairman, Subcommittee on Criminal Law,
Russell Senate Office Building, Washington, D.C.

Dear Senator Mathias: I understand you are holding hearings on March 24 on S. 1446, a bill introduced by you and Senator Percy to implement the Convention on the Physical Protection of Nuclear Material.

This Convention resulted from a U.S. initiative. It would enhance our ability to deal with threats to nuclear material that may arise from terrorist groups.

As Director of the Arms Control and Disarmament Agency under President Nixon, and as Ambassador-at-Large and Special Representative of the President on Nonproliferation Matters under President Carter, I can personally attest to the importance of putting in place measures to improve our ability to deal with crimes related to nuclear material. I therefore strongly support prompt enactment of the implementing legislation.

Sincerely,

Gerard C. Smith.

Senator **Mathias**. Mr. Secretary.

STATEMENT OF RICHARD T. KENNEDY, UNDER SECRETARY OF STATE FOR MANAGEMENT, AND U.S. REPRESENTATIVE TO THE INTERNATIONAL ATOMIC ENERGY AGENCY, DEPARTMENT OF STATE, ACCOMPANIED BY DONALD BETTAUER, ASSISTANT LEGAL ADVISER FOR NUCLEAR AFFAIRS, AND DAVID KLINE, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Ambassador **Kennedy**. Thank you, Senator.

I appreciate this opportunity to testify before you on behalf of the administration in support of S. 1446, a bill which you and Senator Percy introduced to amend title 18 of the United States Code to implement the Convention on the Physical Protection of Nuclear Material, and for other purposes. Mr. Chairman, the administration strongly supports early enactment of this measure, which is identical to a proposal submitted on April 7, 1981, by the Department of State.

A similar measure was submitted to Congress by the previous administration on August 22, 1980, but no committee action was taken since this was late in the second session of the last Congress.

On July 14, 1981, the Senate Foreign Relations Committee voted 16 to 0 to approve a resolution of ratification for the Convention and, on July 30, 1981, the full Senate approved it by a vote of 98 to 0.

It is now important that the bill to implement the Convention be acted upon promptly in order to permit the United States to deposit its instrument of ratification for the Convention.

The negotiation of this Convention was a successful U.S. initiative. As early as 1974, the Secretary of State proposed the idea of a convention dealing with the physical protection of nuclear material. In two of the provisions in the 1978 Nuclear Nonproliferation Act, Congress joined in a call for the negotiation of such a convention.

We all recognize the urgency of taking measures to deal with the worldwide threat of terrorism. The Convention on the Physical Protection of Nuclear Material is an important step which addresses one facet of this serious problem. It establishes general levels of physical security that must be provided during international shipment of nuclear material, establishes a general framework for cooperation among States in the recovery and return of stolen material, and defines certain serious offenses involving nuclear material which States that are parties to the Convention are to make punishable and for which offenders will be subject to a system of extradition or submission for prosecution.

The legislation before you is necessary to implement the latter provisions, and thus must be enacted before the United States ratifies the Convention. Let me review briefly how S. 1446 will implement these provisions.

Under article 7 of the Convention, each State is required to make punishable under its national law serious offenses involving nuclear material, such as theft or robbery of nuclear material, embezzlement or fraudulent obtaining of nuclear material, and demanding nuclear material by threat or force or other form of intimidation. Section 2 of S. 1446 would insert a new section 1445 in title 18 of the United States Code, paragraph (a) of which will enact into U.S. law the offenses set forth in article 7 of the Convention.

Article 8 of the Convention requires each State party to establish its jurisdiction over these offenses when committed in the territory of that State, on board a ship or aircraft registered in that State, or when the alleged offender is a national of that State. The article further requires that each State party establish jurisdiction over an alleged offender present in its territory so that the person may be submitted for prosecution, if not extradited to another State that has jurisdiction over the offense. Paragraph (b) of proposed section 1445 establishes jurisdiction as required by article 8.

Paragraph (c) of section 1445 contains required definitions, and paragraph (d) establishes the authority of the Attorney General to receive assistance from the military in the enforcement of the section. This provision creates an exemption from the prohibition against using the military to enforce the laws—the so-called Posse Commitatus Act. Further, the FBI is given investigative jurisdiction.

As an ancillary matter, section 3 of S. 1446 would revise the definition of international organization in 18 U.S. Code 1116(b)(5), since the current definition contains a technical deficiency which might preclude full implementation of U.S. obligations under the United

Nations Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents. The current section 1116 only covers crimes against officials of international organizations in which the United States participates, while the Convention requires coverage of crimes against officials of any intergovernmental international organization.

It should be noted that with respect to the establishment of jurisdiction for offenses under proposed paragraph (b)(3) of section 1445, only offenses concerning nuclear material used for peaceful purposes are covered. This is because the Convention itself, in article 2, is limited to nuclear material used for peaceful purposes. However, with respect to jurisdiction under paragraphs (b) (1) and (2), nuclear material used for any purpose is covered, since within these traditional areas of U.S. jurisdiction it was thought desirable to cover offenses involving military-use nuclear material as well as those involving peaceful-use nuclear material.

The broad jurisdictional provisions in S. 1446 will help prevent crimes involving nuclear material by making it more difficult for those who commit those crimes to find safe haven anywhere in the world. This approach to crimes deemed of serious international concern has been used in previous conventions to which the United States is a party and for which the Congress has enacted similar implementing legislation. Specifically, similar jurisdictional provisions may be found in the Convention on the Protection of Diplomats, referred to earlier, and its implementing legislation, 18 U.S.C. 1116, and the Convention on the Suppression of Unlawful Seizure of Aircraft—the Hague Hijacking Convention—and its implementing legislation, Public Law 93-366.

The administration submitted a detailed section-by-section analysis of the provisions in this bill with its April 7, 1981, proposal, and I will be pleased to provide a copy for the record.

If there are any technical questions concerning S. 1446 or the Convention which the committee would like addressed, Ronald Bettauer, the Department of State's Assistant Legal Adviser for Nuclear Affairs, who headed the U.S. delegation responsible for negotiating the Convention, and David Kline of the Justice Department's Criminal Division, are accompanying me today and would be pleased to respond.

This proposed legislation not only addresses a matter that the international community has deemed sufficiently serious to take concerted action on; it also addresses a potential U.S. domestic threat. The bill will provide important new tools to domestic agencies concerned with the physical protection of nuclear material.

Mr. Robert Burnett, the Nuclear Regulatory Commission's Division of Safeguards Director, who is responsible for physical security matters in the licensed sector, will address the domestic threat and the utility of the proposed bill in meeting that threat.

Mr. Troy Wade, the Deputy Assistant Secretary for Defense Programs of the Department of Energy, who is familiar with the activities of the Department of Energy's nuclear emergency search team, the NEST, will address the current U.S. Government response capability to criminal activity involving nuclear material, and how the proposed bill will enhance those capabilities.

In conclusion, Mr. Chairman, I would like to urge that the committee take prompt and favorable action on this bill. The negotiation of the Convention on the Physical Protection of Nuclear Material was a U.S. initiative that succeeded. But it is difficult for us to urge other countries to join the Convention until we enact this legislation and thereby enable ourselves to ratify it.

Thank you, Mr. Chairman, for this opportunity to testify on this important matter. I would be pleased to respond to any questions the committee may have, or perhaps you would prefer that the other witnesses proceed with their opening statements and then go to the questions.

Senator MATHIAS. Well, so we do not delay you, let me just address a question to you now.

There is a wide concern, both in the United States and elsewhere, over the possibility of nuclear warfare. In my judgment, a major part of that concern ought to be focused on proliferation and on the extension of the possession of nuclear materials, nuclear weapons, and nuclear technologies.

There was a time when the United States and the Soviet Union could simply, by sitting at a table together, dominate the issue of nuclear weaponry; decisions that were made by those two parties would control the world. Now, there is a danger that nuclear weapons technology is so widespread that the United States and the Soviet Union, regardless of what decisions they make, may not be able to limit the dangers of nuclear warfare or the dangers to the human race that result from the existence of nuclear weapons.

It seems to me that this legislation plays a role in that picture; that it makes less likely a repetition of episodes that are rumored to have occurred where nuclear materials and equipment have been stolen. This makes it very clear that the United States is not going to condone any such actions in the future, is that not true?

Ambassador KENNEDY. Yes, sir, it is precisely the purpose of the legislation. I would second your concern, Senator. There is no doubt in my mind, and I think in the mind of the administration as a general proposition, that nothing can be more dangerous than the proliferation of nuclear weaponry.

The proliferation of nuclear weaponry is not just a question of national level activity. Indeed, the proliferation problem could involve subnational groups or individuals who, for political gain, sought to acquire a nuclear weapon. Hopefully, the objective of any such group or individual would be limited to extortion, but nonetheless the extortion itself is something that cannot be tolerated; it is simply too dangerous a proposition. And it is the purpose of this legislation to at least significantly deter, if not prevent, such activity and to establish extremely high penalties for it.

Senator MATHIAS. I have been advised that there are as many as 24 corporations in the world that have the capacity to develop nuclear weapons, if they chose to devote the resources and the expertise to do so. Now, I do not ask you to confirm or deny the actual number.

But, clearly, as you have suggested, there are organizations and institutions other than nations that are now capable of nuclear weaponry, and this legislation, again, looks to those more mundane levels. It is no longer just up there at the Kremlin; it is from many other sources that this danger could erupt upon mankind.

Ambassador **Kennedy**. Senator, you have put it very well. If I might, however, I would like to question the assumption that some make that it is possible to build a nuclear explosive device very easily. It is not.

The construction of a nuclear explosive device, however crude it may be, is a very complicated and technically difficult thing, and a very dangerous proposition. So, it is not easy, but neither is it impossible. The fact that it is possible and that there are people who could devote the time and effort and marshall the expertise to do it makes this kind of legislation extremely important.

Senator **Mathias**. Now, Mr. Secretary, I have about seven other questions which are somewhat technical in nature. And if it is agreeable to you, I might submit them to you in writing and ask you to respond to them in writing for the record, and we will hold the record open for a day or two for your convenience in making those responses.

Ambassador **Kennedy**. We would be very pleased to do so, sir.

Senator **Mathias**. Thank you very much for being here.

[The prepared statement, section-by-section analysis of S. 1446, and responses to questions of Senator Mathias, submitted by Under Secretary Kennedy, follow:]

PREPARED STATEMENT OF UNDER SECRETARY RICHARD T. KENNEDY

Summary of Statement

The Administration strongly supports prompt enactment of S. 1446, a bill to implement the Convention on the Physical Protection of Nuclear Material.

The Convention, a U.S. initiative internationally, was approved by the Senate on July 14, 1981, by a vote of 98-0. It establishes general levels of physical security for international shipments of nuclear material, provides for cooperation among states in the recovery of stolen nuclear material and defines certain serious offenses parties are to make punishable and for which offenders will be subject to prosecution or extradiction. The proposed implementing legislation relating to these offenses must be enacted before the United States becomes bound by the Convention.

The proposed legislation amends title 18 of the U.S. Code to include the offenses set forth in the Convention and establishes the necessary jurisdiction. In addition it permits the Attorney General to obtain assistance from the military in enforcement.

It is urgent to deal with the worldwide threat of terrorism. The Convention and proposed legislation address one facet of this serious problem.

* * * * *

Mr. Chairman and Members of the Committee,

I appreciate this opportunity to testify before you on behalf of the Administration in support of S. 1446, a bill introduced by Senators Mathias and Percy to amend title 18 of the United States Code to implement the Convention on the

Physical Protection of Nuclear Material, and for other purposes. The Administration strongly supports prompt enactment of this measure, which is identical to a proposal submitted on April 7, 1981, by the Department of State.

A similar measure was submitted to the Congress by the previous Administration on August 22, 1980, but no Committee action was taken since this was late in the second session of the last Congress. On July 14, 1981, the Senate Foreign Relations Committee voted 16-0 to approve a resolution of ratification for the Convention and, on July 30, 1981, the full Senate approved it by a vote of 98-0. It is now important that the bill to implement the Convention be acted on promptly in order to permit the United States to deposit its instrument of ratification for the Convention.

The negotiation of this Convention was a successful United States initiative. As early as 1974, the Secretary of State proposed the idea of a convention dealing with the physical protection of nuclear material. In two of the provisions in the 1978 Nuclear Non-Proliferation Act, Congress joined in a call for the negotiation of such a convention.

We all recognize the urgency of taking measures to deal with the worldwide threat of terrorism. The Convention on the Physical Protection of Nuclear Material is an important step which addresses one facet of this serious problem. It establishes general levels of physical security that must be provided during international shipment of nuclear material, establishes a general framework for cooperation among states in the recovery and return of stolen nuclear material, and defines certain serious offenses involving nuclear material which states that are parties to the convention are to make punishable and for which offenders will be subject to a system of extradition or submission for prosecution.

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Article 8 of the Convention requires each state party to establish its jurisdiction over these offenses when committed in the territory of that state, on board a ship or aircraft registered in that state, or when the alleged offender is a national of that state. The article further requires that each state party establish jurisdiction over an alleged offender present in its territory so that the person may be submitted for prosecution if not extradited to another state that has jurisdiction over the offense. Paragraph (b) of proposed section 1445 establishes jurisdiction as required by article 8.

Paragraph (c) of section 1445 contains required definitions and paragraph (d) establishes the authority of the Attorney General to receive assistance from the military in the enforcement of the section. This provision creates an exemption from the prohibition against using the military to enforce the laws (the so-called "posse commitatus" act). Further, the FBI is given investigative jurisdiction.

As an ancillary matter, section 3 of S. 1446 would revise the definition of "international organization" in 18 U.S.C. 1116(b)(5), since the current definition contains a technical deficiency which might preclude full implementation of United States obligations under the U.N. Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents. The current section 1116 only covers crimes against officials of international organizations in which the U.S. participates, while the convention requires coverage of crimes against officials of any intergovernmental international organization.

It should be noted that, with respect to the establishment of jurisdiction for offenses under proposed paragraph (b)(3) of section 1445, only offenses concerning nuclear material used for peaceful purposes are covered. This is because the Convention itself, in article 2, is limited to nuclear material used for peaceful purposes. However, with respect to jurisdiction under paragraphs (b)(1) and (2), nuclear material used for any purpose is covered, since within these traditional areas of U.S. jurisdiction it was thought desirable to cover offenses involving military-use nuclear material as well as those involving peaceful-use nuclear material.

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The Administration submitted a detailed section-by-section analysis of the provisions in this bill with its April 7 proposal, and I will be pleased to provide a copy for the record. If there are any technical questions concerning - S. 1446 or the Convention which the Committee would like addressed, Ronald Bettauer, the Department of State's Assistant Legal Adviser for Nuclear Affairs, who headed the U.S. delegation responsible for negotiating the Convention, and David Kline of the Justice Department's Criminal Division, are accompanying me today and would be pleased to respond.

This proposed legislation not only addresses a matter that the international community has deemed sufficiently serious to take concerted action on, it also addresses a potential U.S. domestic threat. The bill will provide important new tools to domestic agencies concerned with the physical protection of nuclear material. Mr. Robert Burnett, the Nuclear Regulatory

Commission's Division of Safeguards Director, who is responsible for physical security matters in the licensed sector, will address the domestic threat and the utility of the proposed bill in meeting that threat. Mr. Troy Wade, Deputy Assistant Secretary for Defense Programs of the Department of Energy, who is familiar with the activities of the Department of Energy's nuclear emergency search team (NEST), will address the current U.S. Government response capability to criminal activity involving nuclear material, and how the proposed bill will enhance the capabilities.

In conclusion, I would like to urge that the Committee take prompt and favorable action on this bill. The negotiation of the Convention on the Physical Protection of Nuclear Material was a U.S. initiative that succeeded. But it is difficult for us to urge other countries to join the Convention until we enact this legislation and ourselves ratify it.

Thank you for this opportunity to come before you on this important matter. I will be pleased to respond to any questions the Committee may have.

Enclosures.

Section-by-Section Analysis of S. 1446

Section 1 provides that, upon enactment, the bill may be cited as the "Act for the Implementation of the Convention on the Physical Protection of Nuclear Material." This is an express indication that such enactment reflects an exercise of the treaty power.

Section 2 is a proposed new chapter 70, Nuclear Materials, for title 18, United States Code. The chapter would consist of one section, 18 U.S.C. 1445, Prohibited Transactions in Nuclear Materials. Subsection (a) thereof contains seven categories of prohibited actions, which encompass the offenses described in Article 7 of the Convention. The prohibitions are prefaced by the words "whoever . . . intentionally." Thus, no natural person or legal entity is excluded from application of the prohibitions. The word "intentionally," adopted from the Convention, is used in its generally accepted sense to mean having a conscious objective or desire to engage in the prohibited conduct. The Convention does not appear to require any particular state of mind with respect to the fact that the conduct prohibited is conduct in regard to nuclear material. For clarity in this aspect, the prohibitions are drafted to extend to conduct involving any material in fact containing plutonium or uranium. Similarly, the Convention langauage of "intentional commission of an act without lawful authority . . . ." is interpreted to require proof only that the act done was intentional and not to embrace a requirement that the defendant also intended that his act be unauthorized. For clarity on this point, the phrase "without authority" is also placed after the words "in fact".

By reason of the definitions in Article 1(a) and (b) of the Convention, some forms or isotopic mixes of plutonium and uranium are excluded from the operation of the Convention. Those definitions are not congruent with the definitions of source and special nuclear material in the Atomic Energy Act of 1954, as amended. See sec. 11(z) and (aa), id., 68 Stat. 992 (42 U.S.C. 2014(z) and (aa)). The Convention requirements, in various aspects, are both narrower and broader than existing controls under the Act. Thus, conformation of provisions of the Act to requirements of the Convention would involve considerable, cumbersome, and perhaps detrimental revision of the Act. The draft bill, addressing itself directly to implementation of the Convention, avoids the problems inherent in revision of the Act, with only the nominal cost of some duplication of existing law.

In accord with the Convention (Article 1(a) and (b)), proposed 18 U.S.C. 1445(c) defines "plutonium" as plutonium which does not have an isotopic concentration in plutonium 238 in excess of 80%. "Uranium" is defined as uranium 233 or uranium other than in the form of ore or ore-residue which contains the mixture of isotopes occurring in nature or contains the isotope 235 or 233 or both in such an amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature.

Proposed paragraphs 18 U.S.C. 1445(a)(1) - (7) encompass the conduct denounced in Article 7, subsections 1(a)-(g). Aside from the use of variants for proper syntax, the operative language in paragraphs (1), (2), (3), and (6) is identical with that used in the source subsections of the Convention, and no explication of that language appears necessary.

Paragraphs (4) and (5) reflects an express inclusion within the term "attempt," as used in the Convention, of a conspiracy plus an overt act. Attempt is generally said to involve intent to commit an offense plus action beyond mere preparation to commit the intended offense. The element of conspiracy embraces not only the requisite intent but is also an act of preparation, which, when coupled with the further step of an overt act, warrants coverage by Congress as a form of attempt. Article 7(f) (attempt) does not embrace the nuclear extortion offenses (proposed 18 U.S.C. 1445(a)(6) and (7)), but 18 U.S.C. 371 would clearly embrace a conspiracy to commit those offenses, unless jurisdiction were to be asserted solely under proposed 18 U.S.C. 1445(b)(3) (presence of offender in the United States).

In paragraph (7)(B), the Convention term "State" (Article 7(1)(e) (ii)) is broken out into the equivalent phrase "the United States or a foreign government." The latter term is defined by reference to the definition of that term in 18 U.S.C. 1116(b). The same reference is made for definition of the Convention term "international organization."

In light of the provisions of 18 U.S.C. 2 and 3, no action is required to cover the Convention offense (Article 7(1)(g)) of doing "an act which constitutes participation... in any offense described in paragraphs (a) to (f)" of Article 7(1).

In Article 7(2), the Convention requires "...appropriate penalties which take into account...[the] grave nature" of Convention offenses. In keeping with the policy reflected in proposed 18 U.S.C. 2201 and 2301, S. 1722, 96th Cong., 1st Sess. (1979), the draft bill provides for a fine of up to $250,000 and imprisonment for up to twenty years.

Under Article 8, a State Party to the convention must establish jurisdiction over nuclear materials offenses committed within its territory, on board a ship or aircraft registered with it, by its nationals, or by any offender anywhere who is present in the State and not extradited under Article 11 of the Convention. Proposed 18 U.S.C. 1445(b) provides for such jurisdiction. Note that the provision for universal jurisdiction (proposed 18 U.S.C. 1445(b)(3)) is limited to offenses involving nuclear materials used, etc., for peaceful purposes. Article 2 limits application of the Convention to such materials. International law and the powers of Congress over matters relating to commerce and national defense provide plenary support, as observed before, for Federal jurisdiction over nuclear materials offenses except as to purely extraterritorial offenses. There the basis for Federal control must be found in the Convention. Hence, the appearance in proposed 18 U.S.C. 1445(b)(3) of the limiting words "for peaceful use."

Proposed 18 U.S.C. 1445 is thus broader in some respects than the Convention in that the description of the offenses therein and jurisdiction over those offenses, except as to the exercise of universal jurisdiction, are independent of the intended use of the nuclear materials for peaceful purposes, domestically or abroad or for weaponry. Proposed 18 U.S.C. 1445(b)(1) covers not only vessels and aircraft registered with the United States (Convention, Article 8(1)(a)) but also those other vessels and aircraft included within the special maritime and aircraft jurisdiction of the United States.

Similarly, proposed 18 U.S.C. 1445(b)(4) goes beyond the niceties of the definition of "international nuclear transport" in the Convention (Article 1(c)) and the permissive provision (Article 8(4)) regarding jurisdiction over offenses involving nuclear materials in such transport. The proposal would provide Federal jurisdiction over offenses involving nuclear materials of any type, from the time shipment of the materials from anywhere to the United States commences and jurisdiction over offenses as to materials in shipment from the United States until arrival of the materials at a facility of the receiver within the country of ultimate destination. That country might, of course, be the United States itself, as in the case of a shipment from Michigan via Canada to New York.

Finally, as is the case in other exceptionally grave offenses (e.g., 18 U.S.C. 351, 1116, or 1751), the Attorney General is authorized under proposed 18 U.S.C. 1445(d) to request (and impliedly to receive) assistance from any Federal, State or local agency, including the Army, Navy, and Air Force, in the enforcement of proposed 18 U.S.C. 1445 without regard to any provision of law or regulation which might otherwise limit the power to request or furnish assistance. As in other statutes using such language, the term "Navy," as a Federal agency, refers to the Department of the Navy and thus includes the Marine Corps. Though couched in less specific language, similar authority for such enforcement of the Atomic Energy Act, supra, appears in subsections 161(f) and 221(a) of the Act (42 U.S.C. 2201(f) and 2271(a)). As in subsection 221(b) of the Act, supra (42 U.S.C. 2271(b)), investigative jurisdiction would be vested in the Federal Bureau of Investigation.

Section 3 of the draft bill is a technical amendment of the definition of the term "international organization" in 18 U.S.C. 1116(b)(5). Expansion of that definition to include international organizations other than those in which the United States is a member (e.g., the European Community) is necessary to implement the Convention. Amendment to that end in 18 U.S.C. 1116 also eliminates a technical deficiency in implementation by the United States of the United Nations Convention for the Protection of Internationally Protected Persons and permits reliance upon the same definition in legislation to implement the United Nations Convention against the Taking of Hostages. The expanded definition would reach a public organization created pursuant to treaty or other agreement under international law, i.e., an agreement recognized as binding the nations concerned to observance of certain rights and obligations inter se, as instruments for engagement of those nations in the conduct of some aspect of their international affairs.

Section 4 of the draft bill would amend the chapter analysis of title 18, United States Code, to reflect insertion of the new chapter in that title.

Department of State Answers to Questions Put
Forward by Senator Mathias

Question 1:	What role does the International Atomic Energy Agency (IAEA) play in combatting threats to the security of nuclear materials, especially with regard to nations that are not parties to the treaty?
Answer:	Under the Convention (article 5(2)), in the case of theft, robbery or other unlawful taking of nuclear material or credible threats thereof, any state, whether or not a party to the Convention, has standing to request IAEA assistance. In the event of such a request, the IAEA could assist in transmitting information regarding the threat and help coordinate any efforts. Any assistance would of course have to be consistent with the national law of the states concerned.

Apart from the Convention, experts groups have met under the auspices of the IAEA to develop recommended physical protection measures for various categories of nuclear material. These measures currently appear in IAEA document INFCIRC/225/Rev.1. These not only serve as a guide for each state in setting up an adequate system of physical protection, but have also been adopted by the United States as an export reqirement that is considered during the licensing of nuclear items.

The physical protection of nuclear material is primarily a reponsibility of each country and not a responsibility of the IAEA. The IAEA does not have responsibility in this area under its

Statute. This Convention is the first instrument to give the IAEA some official role.

Question 2: What recourse is there if any nation, party or not, does not act adequately to punish those who threaten the security of nuclear material?

Answer: This Convention has a dispute settlement provision. Under article 17, if a dispute between parties concerning the interpretation or application of the Convention cannot be settled by negotiation or other peaceful means acceptable to the parties to the dispute, any party to the dispute can go either to arbitration or to the International Court of Justice. With respect to non-parties, the key recourse would be through diplomatic channels.

Question 3: What nations with a nuclear capability are not at present time signatories to the Convention?

Answer: Two charts are attached. The first chart summarizes the signature and ratification status of the Convention. The second chart lists countries with nuclear programs and indicates whether they have signed and/or ratified the Convention. (See charts on pp. 27-28.)

Question 4: Why would nations that have nuclear capability not want to participate in what would seem to be something that should be in their own interest?

Answer: We hope that the Convention will be widely ratified, both by countries with nuclear programs and those that do not have such programs. Once the implementing legislation is passed and the U.S. submits its instrument of ratification, thereby becoming a party to the Convention, we expect to urge other countries to do likewise. Some countries, however, may not join the Convention, even though we believe it would be in their own interest. For example, India and Argentina expressed reservations about the Convention during its negotiation. The principal reason such countries give for their reservations is that the physical protection of nuclear material is a sovereign, domestic police responsibility.

Question 5: This legislation would modify the long-established doctrine of *posse comitatus* giving the military a role to play in the enforcement of the law. We enacted a similar provision last year in permitting the U.S. Navy to report suspicious drug-related activity to the civilian authorities. Can you tell us what role is envisioned for the military and why you feel it is essential?

Answer: The crimes dealt with in the legislation are of extreme gravity and could pose a serious and widespread public danger. The local authorities and the FBI may not have adequate resources to respond. In such a situation, it is essential that military assistance be available. The military are familiar with the design and handling of nuclear weapons and have special expertise that can be brought to bear. In certain threat situations, one could envisage the military being requested only to provide logistic and security support. However, if the threat involved a stolen nuclear weapon, the military role would be more significant.

Question 6: Could extremist organizations such as the Red Brigade be prosecuted under this Convention?

Answer: If such an organization, or any of its members, committed an offense set forth in the Convention, or participated in the commission of such an offense by aiding and abetting or by conspiring to commit such an offense, the persons involved could be prosecuted under the proposed bill, if they ever came to the United States or came under any other jurisdictional provisions (proposed sections 1445(b)). Similarly, other states parties to the Convention would also be able to prosecute under the Convention and their implementing domesic criminal law.

Question 7: Can you tell us how this legislation would go beyond the Convention to include not only the peaceful uses, but also the military uses of nuclear material? Why wasn't this a part of the Convention as negotiated? Did the United States fight for its inclusion?

Answer: The Convention only covers nuclear material used for peaceful purposes. The section of the bill that establishes extraterritorial U.S. jurisdiction is therefore limited to peaceful purposes of nuclear material. However, for criminal offenses within the more traditional areas of U.S. jurisdiction (proposed section 1445(b)(1) and (2)), it is desirable to cover offenses involving both military use and peaceful use of nuclear material. The United States opposed having this broader coverage in the Convention itself because of the risks that information relating to the U.S. nuclear weapons program might be compromised.

Question 8: I understand that the House Subcommittee on Crime has already marked up and reported out their bill. Could you explain what changes were made at mark-up?

Would you recommend that we consider the same changes in our Subcommittee?

Answer: The bill reported out by the House Subcommittee on Crime (H.R. 5228) contains the same substance as found in S. 1446. However, the House Subcommittee redrafted the crimes in the style of the proposed Criminal Code and clarified the circumstances under which assistance from the military can be provided. We would recommend that you consider the same changes.

Convention on the Physical Protection of Nuclear Material Signature/Ratification Status*

	Signed	Ratified
USA	3/3/80	
Austria	3/3/80	
Greece	3/3/80	
Dominican Republic	3/3/80	
Guatemala	3/12/80	
Panama	3/18/80	
Haiti	4/10/80	
Philippines	5/19/80	9/21/81
GDR	5/21/80	2/5/81
Paraguay	5/21/80	
USSR	5/22/80	
Belgium	6/13/80	
Denmark	6/13/80	
France	6/13/80	
FRG	6/13/80	
Ireland	6/13/80	
Italy	6/13/80	
Luxembourg	6/13/80	
Netherlands	6/13/80	
UK	6/13/80	
EURATOM	6/13/80	
Hungary	6/17/80	
Sweden	7/2/80	8/1/80
Yugoslavia	7/15/80	
Morocco	7/25/80	
Poland	8/6/80	
Canada	9/23/80	
Romania	1/15/81	
Brazil	5/15/81	
South Africa	5/18/81	
Bulgaria	6/23/81	
Finland	6/25/81	
Czechoslovakia	9/14/81	
Korea, Republic of	12/29/81	
	34	3

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*Information as of January 15, 1982

Nuclear Programs (Power and/or Research Reactors in Operation, Under Construction, or on Order)*

	Signed The Convention on the Physical Protection of Nuclear Material**	Ratified the Convention**
Argentina		
Australia		
Austria	3/3/80	
Bangladesh		
Belgium	6/13/80	
Brazil	5/15/81	
Bulgaria	6/23/81	
Canada	9/23/80	
Chile		
China		
Colombia		
Czechoslovakia	9/14/81	
Democratic People's Republic of Korea		
Denmark	6/13/80	
Egypt		
EURATOM	6/13/80	
Finland	6/25/81	
France	6/13/80	
German Democratic Republic	5/21/80	2/5/81
Germany, Federal Republic of	6/13/80	
Greece	3/3/80	
Hungary	6/17/80	
India		
Indonesia		
Iran		
Iraq		
Israel		
Italy	6/13/80	
Japan		
Korea, Republic of	12/29/81	
Libya		
Luxembourg	6/13/80	
Mexico		
Morocco	7/25/80	
Netherlands	6/13/80	
Norway		
Pakistan		
Peru		
Philippines	5/19/80	9/21/81
Poland	8/6/80	
Portugal		
Romania	1/15/81	
South Africa	5/18/81	
Spain		
Sweden	7/2/80	8/1/80
Switzerland		
Thailand		
Turkey		
United Kingdom	6/13/80	
United States	3/3/80	
USSR	5/22/80	
Uruguay		
Venezuela		
Yugoslavia	7/15/80	
Zaire		
Taiwan		

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* List based primarily on information in 24 Nuclear News vol 10, pp. 85-104 (August 1981) and The Annual Report For 1980 of the International Atomic Energy Agency, GC(XXV)/624, pp. 53-56 (July 1981).

** Information as of January 15, 1982.

Senator MATHIAS. Our next witness is the Honorable Troy E. Wade, Deputy Assistant Secretary for Defense Programs in the U.S. Department of Energy.

STATEMENT OF TROY E. WADE, DEPUTY ASSISTANT SECRETARY FOR DEFENSE PROGRAMS, DEPARTMENT OF ENERGY

Mr. WADE. Thank you, Mr. Chairman. With your permission, I will submit my formal testimony for the record and summarize.

Senator MATHIAS. Your full statement will appear in the record as if read.

Mr. WADE. Thank you very much.

It is a pleasure for me to be here this morning on behalf of the Department of Energy to testify on Senate bill 1446, and specifically for the group within the Department of Energy known as the Nuclear Emergency Search Team. Although I am now assigned to DOE headquarters, my previous assignment was with the Nevada Operations Office, and thus I was directly involved with the formulation of this program.

The Department of Energy and its predecessor agencies have always had an emergency response role with regard to accidents involving nuclear weapons. With the increase in worldwide terrorism in the seventies, the Atomic Energy Commission, now the DOE, focused on a capability for responding to potential nuclear terrorist threats.

In 1974, the AEC assigned to the Nevada Operations Office the responsibility for assembling this capability to respond to nuclear threats. This assignment was made because of that office's long experience with the Nation's nuclear weapons testing program and the radiation detection capabilities developed by the DOE weapons laboratories; specifically, the Lawrence Livermore National Laboratory, the Los Alamos National Laboratory, and the Sandia National Laboratory.

Because of the concerns of the Government and the capabilities of these laboratories, in 1974 the Nuclear Emergency Search Team was born. NEST is comprised of a group of volunteer scientists and technicians, all having regular assignments in this Government's nuclear weapon development program, who are on call in the event of a NEST-type incident.

The NEST mission that has been assigned to this group provides for comprehensive search, detection, and identification capabilities for lost or stolen nuclear weapons, special nuclear materials, and as a response to nuclear explosive threats or radiation threats.

The NEST response is tailored to meet each situation. Typically, a nuclear threat comes to the attention of our agency through a law enforcement agency. The response to that threat can be tailored from a minimum of two people responding to as many as 200.

Agreements exist with the Department of Defense to provide NEST with military airlift support for both personnel and equipment to respond to both continental U.S. incidents and incidents outside of the continental United States.

While most of the equipment and the scientific personnel are located in the western part of the United States at the three laboratories previously mentioned, a small cadre of people and equipment is located at Andrews Air Force Base here in Washington, D.C.

The inventory of NEST equipment is extensive; it is state of the art and includes such things as low-profile gamma and neutron briefcase detection equipment that can be deployed in a variety of ways. The deployed NEST team has the ability to search for special nuclear material. If the material is discovered and there is suspicion of an improvised nuclear device, the NEST team is equipped to diagnose the design and evaluate the potential hazard.

Using all available information, the NEST personnel will provide technical support in disarming or disabling the device. At the same time, the NEST people would be working with authorities such as FEMA on damage-limitation techniques and hazards evaluation.

In the 7 years that NEST has existed, they have assisted in analyzing 70 possible threats, and have deployed on 20 different occasions. I would like briefly to summarize three of those deployments, just to give you an idea of the broad spectrum of involvement.

In November 1975, the FBI requested NEST assistance to search for a reported improvised nuclear device in the Los Angeles area. It was an extortion against the Union Oil Co. of California. NEST, under the leadership of the Federal Bureau of Investigation, did deploy to the Los Angeles area and, over an intensive 3-day period, searched all of the Union Oil facilities in the Los Angeles Basin, concluded that no device existed and concluded that the threat was a hoax.

That did turn out to be the case. The extortionist was located by the FBI and was arrested, tried, and convicted.

Another example not of a malevolent nature, but typifying the NEST capability, was called Operation Morning Light. You may recall, in 1978, the circumstances surrounding the reentry of a Soviet satellite containing a small nuclear reactor over the Northwest Territories.

The U.S. Government dispatched the Nuclear Emergency Search Team capability in response to a request from the Canadian Government. Over 200 NEST personnel were involved in a 3-month period in the Northwest Territories locating pieces of the reactor and the satellite.

In addition to responding to threats, one of the NEST capabilities is to measure radiation background in preparation for nuclear threats. Extensive measurements such as that have been made in the Washington area.

Many Federal agencies are involved, along with the Department of Energy, in providing for what is truly a U.S. Government capability in this sense. A tripartite agreement exists between the FBI, the Department of Defense, and the Department of Energy in clearly assigning the responsbilities of each department when responding to such a threat. The Federal Emergency Management Agency is also a critical part of the family.

As you would imagine, a vigorous research and development program also is carried out within the Department of Energy to continue to enhance our capability to respond to such a thing, and several major exercises have been carried out and will be carried out in the future.

Senate bill 1446 would authorize the Attorney General to obtain assistance in dealing with such incidents from the Department of Defense. It would therefore enhance the DOE capability to respond to nuclear incidents and serve the deterrent role that criminal statutes traditionally serve.

Internationally, enactment of the proposed legislation will enable the Government to ratify the convention on the Physical Protection of Nuclear Material and to encourage other nations to do so. This convention will enhance our helping other countries in meeting emergencies, should they develop, and provide a formal structure for worldwide cooperation in detection, identification and recovery of nuclear materials.

We therefore believe this implementing legislation is extremely important, and support its enactment, as well as the U.S. ratification of the convention.

This concludes my summary, Mr. Chairman. I would be pleased to respond to any questions.

Senator MATHIAS. Well, thank you very much for your statement.

As I hear you, what you are telling us is that this bill is not some theoretical proposal; that it deals with real-life situations; that there have been either mysterious disappearances or thefts of nuclear materials. So, we really face something here that looks at a real problem.

Mr. WADE. Certainly, the sign of the times is that nuclear terrorist kinds of threats are on the increase and are going to continue to increase. As I mentioned, there have been 70 such threats in which my department has been involved. Fortunately, they have been hoaxes. We have responded in only one instance involving actual nuclear material; that was, I believe in Erwin, Tenn.

But we feel that in view of the——.

Senator MATHIAS. But it only takes one.

Mr. WADE. It only takes one, and that is why we believe this capability is very important. And we believe that this convention will certainly enhance our capability and invite the other nations to jointly cooperate.

Senator MATHIAS. I notice we have some students in the hearing room this morning, and they might wonder why this bill only applies to U.S. nationals. What happens if a foreign spy steals some nuclear materials?

Mr. WADE. I cannot answer that, Mr. Chairman. I would assume that would come under international law at The Hague, or we would be glad to research that and provide the answer for the record.

Senator MATHIAS. Would you research that, because I think that the record should be abundantly clear on that question? The bill, as I outlined it in my opening statement, does not seem to cover the instance of a foreign agent who might participate in the theft of nuclear materials.

Mr. WADE. We will work with Ambassador Kennedy and his staff and provide you with an answer.

Senator MATHIAS. I would assume that a foreign agent would be covered who participated in a theft in or in transit to or from an area under U.S. jurisdiction, so that he would be covered under those circumstances. That may be an adequate coverage, but I think we do not want to leave any loopholes here.

Mr. **Wade**. It is our belief that it is covered. We will reassure you that it is.

Senator **Mathias**. Fine; I think we want to make the record abundantly clear on that point.

[The following material was subsequently supplied by Mr. Wade in answer to Senator Mathias' queries:]

> A foreign agent who is not a national of the United States and commits any of the offenses described in proposed section 1445(a), would be covered if the offense is committed in the United States or any area under the jurisdiction of the United States under proposed section 1445(b)(1). This traditional reach of U.S. criminal law, which applies irrespective of the nationality of the offender, is thus retained by the proposed bill. In addition, under proposed section 1445(b)(2), there would be Federal criminal jurisdiction over a national of the United States who commits any of the described offenses outside of the United States. There would also be federal criminal jurisdiction over a foreign agent who is not a U.S. national and commits any of the described offenses outside of the United States if the nuclear material involved was in use, storage, or transport for peaceful purposes and the alleged offender is present in the United States.

Senator **Mathias**. Now, you mentioned the 70 threats, some of them hoaxes, from various sources. But in judging whether they are hoaxes or not, you have to judge whether or not terrorist groups do, in fact, have some access to the technology and the resources to develop a nuclear device.

Now, as Ambassador Kennedy has testified, that is not an easy job; it is not something you do in your garage on a Sunday afternoon. But do you believe that there are terrorist groups that have access to resources and technology?

Mr. **Wade**. I think we must assume that there are terrorist groups in the world who have the technical expertise within those groups to proceed down this path if they choose to do so. We are unaware that such a capability does exist, but there have been indications that such a thing could happen.

I certainly agree with Ambassador Kennedy and yourself, Mr. Chairman, that contrary to some of the things that have been published, it is not a do-it-yourself, in-the-basement kind of project, but it certainly is not impossible.

Senator **Mathias**. Thank you very much, Mr. Wade. I would be grateful if you would give us your further thoughts on the subject of foreign agents and make sure that they are adequately covered under other provisions of law.

Mr. **Wade**. I would be happy to do so.

Senator **Mathias**. God forbid that foreign agents invade Germantown, Md., and make off with any nuclear materials.

Mr. **Wade**. We certainly agree, sir.

Senator **Mathias**. Thank you very much.

[The prepared statement of Mr. Wade follows:]

PREPARED STATEMENT OF TROY E. WADE

It is indeed a pleasure to be here this morning to discuss the duties of the group within the Department of Energy (DOE) known as the Nuclear Emergency Search Team (NEST) and the kind of threats to which we have responded. Although I am now assigned to DOE Headquarters, my previous assignment was with the Nevada Operations Office of the Department of Energy and thus entailed direct involvement with the formulation of this program.

The Atomic Energy Act of 1954, as amended, and Executive Order 11490, as amended by Executive Order 11953, established the requirement for the NEST mission. This Executive Order assigns to DOE the responsibility for the security of special nuclear material, fissionable material, and nuclear weapons or devices in DOE custody. This assignment includes coordinating search and recovery operations for nuclear materials, weapons, or devices, assisting in identification and deactivation of an improvised nuclear device, and providing scientific and technical advice for radiation problems.

In conjunction with DOE's nuclear weapons program, DOE and its predecessor agencies have always had an emergency response role with respect to accidents with nuclear weapons. In addition, the DOE is assigned the responsibility for coordinating a timely and effective response to nuclear threats.

With the increase in worldwide terrorism during the 1970's, the Atomic Energy Commission (AEC), now the DOE, focused on developing a capability for effectively responding to potential nuclear terrorism. The responsibility to restructure and organize such a capability was assigned in November 1974 to the Manager of the Department of Energy's Nevada Operations Office in Las Vegas, Nevada.

This office had long experience with our Nation's nuclear program, and the technologies associated with nuclear testing were, and are, the keystone of the NEST capability. The radiation detection capabilities developed by the DOE weapons laboratories, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, and Sandia National Laboratories, and the scientists who developed and now operate those systems are a unique national asset.

Due to the 1974 concerns for a capability to respond to potential nuclear emergencies, the Nuclear Emergency Search Team was born. NEST is comprised of a group of volunteer scientists and technicians, all having regular assignments in this Government's nuclear weapons development program, who are "on call" in the event of a NEST type incident.

As a result of experience, deployments, exercises, etc., these capabilities have been expanded and restructured to provide for comprehensive search, detection, and identification capabilities for lost or stolen nuclear weapons, special nuclear materials, and as a response to nuclear explosive threats and radiation threats.

NEST responds when a nuclear extortion threat is received and deemed credible. The NEST response is then tailored to meet each situation. Typically, a nuclear threat comes to the attention of a law enforcement agency such as the Federal Bureau of Investigation (FBI) which has statutory responsibility for lost or stolen nuclear material whether it be government-owned or licensed by the Nuclear Regulatory Commission. Expert personnel from the FBI, DOE, and DOE weapons laboratories and contractors are assembled to assess the threat message. This threat credibility analysis considers such factors as behaviorial attributes, operational realism, and technical feasibility.

If this analysis results in a conclusion that the threat is credible, the FBI may request NEST assistance. At that time, a crisis management organization of DOE, called the Emergency Action and Coordination Team (EACT), will authorize the Nevada Operations Office to deploy a NEST team. NEST members can be deployed within two hours of notification.

The NEST capability is designed to provide graduated responses tailored to each situation. At one end of the scale, a minimum response might consist of two people sent to the scene to establish the degree of danger that exists. In a major response, the NEST capability could involve as many as 200 people and several airplane loads of equipment whose full attention would focus on a variety of tasks assisting responsible officials in the handling of an emergency.

As established agreement exists with the Department of Defense (DOD) to provide NEST with military airlift support for both equipment and personnel. This function is coordinated by the Joint Nuclear Accident Coordinating Center which is jointly operated by the Department of Energy's Albuquerque

Operations Office and the Field Command of the Defense Nuclear Agency at Kirtland Air Force Base, New Mexico.

Most of the equipment and the scientific personnel are located in the Western part of the United States. A smaller cadre of people and equipment is located at Andrews Air Force Base near Washington, D. C. Much of the equipment is prepacked in cargo containers for rapid fly-away capability in wide-body commercial or military aircraft as the situation warrants. Various specialized modules have been engineered for specific tasks such as communications, mechanical needs, computers, and photographics.

The inventory of NEST equipment is extensive as required by the nature of the problem. For searching, detectors that span the radiation spectrum are employed. Instrumentation includes low-profile gamma and neutron briefcase units. In addition, NEST also utilizes roadblock monitors that survey all the traffic in and out of an area of concern. Van and aerial-mounted detection equipment are also available in several configurations.

The deployed NEST team has the ability to search for special nuclear material. If the material is discovered and if there is suspicion of an improvised nuclear device, NEST is equipped to diagnose the design and evaluate the potential hazard. Using all available information, the NEST personnel will provide technical support in disarming or disabling the device. At the same time, NEST will be working with authorities such as the Federal Emergency Management Agency (FEMA) on damage limitation techniques and hazard evaluations and predictions. If any clean-up effort is required, NEST will provide support to local, state, and Federal agencies.

In seven years, the Nuclear Emergency Search Team has assisted in analyzing 70 possible threats of which we have deployed on 20 occasions. I would like to tell you about three specific cases which should give you examples of NEST's responsibilities and activities.

In November 1975, the FBI requested NEST assistance to search for a reported nuclear device in the Los Angeles area.

The nuclear extortion note received by the Chairman of the Board of Union Oil Company of California demanded $100,000. If the money was not forthcoming, the extortionist threatened to destroy a Union Oil facility with a nuclear device. The threat required a thorough air and ground search of several Union Oil properties in Los Angeles. An intensive three-day search, utilizing approximately 40 NEST members and highly sensitive radiation detection equipment, concluded that no device existed and that the threat was a hoax. The extortionist was located a short time later, arrested, tried, and convicted.

Another example not of a malevolent nature but typifying how NEST is used, we called "Operation Morning Light." In 1978, a Soviet satellite containing a small nuclear reactor reentered the atmosphere and disintegrated over Canada. The Canadian Government requested U.S. assistance, and NEST was deployed. The team traveled to the Canadian Northwest Territory to search for, identify, and recover debris from the fallen Soviet satellite Cosmos 954 The vast search area required more than 200 NEST personnel over a three-month period and a substantial portion of the technical equipment. Recovered parts of the satellite numbered in the hundreds.

In addition to responding to nuclear threats, we accumulate radiation background data to prepare for possible threats. During June 1976, a radiation background measurement survey of central Washington, D.C., was conducted to obtain radiological data in the event a threat was received during the bicentennial celebration.

This data would prove invaluable should there be a nuclear extortion threat in the Washington area. Several critical facilities were surveyed at that time, and the data obtained has been continually updated.

A great amount of planning is required to prepare for the successful accomplishment of our mission. We must focus on the unique problem areas established to solve the problem. To accomplish this, working groups have been established reporting to a NEST Executive Planning Board. These groups examine and address the specific disciplines and capabilities of NEST. A few personnel from other Federal agencies serve as members of these working groups. Several major exercises involving multiple agency participation have been held, and more are planned, including a major Washington-level Command Post exercise under current planning.

Since many Federal agencies must work together during an emergency, interagency agreements are critical to these operations. They provide for joint participation in training, indoctrination, and exercising to ensure a totally coordinated government response. For instance, a tripartite agreement exists between the Federal Bureau of Investigation, Department of Defense, and Department of Energy. This agreement assigns and defines the responsibilities of each department when responding to the threat of a nuclear incident. FEMA is also a critical part of the NEST family.

Countering nuclear threats requires teamwork by Federal, state, and local agencies. The FBI has overall jurisdiction at the Federal level and is responsible for the legal aspects of any counter-threat actions taken. The Deartment of Energy has the capability of providing technical personnel and equipment to assist in locating, identifying, and neutralizing nuclear devices. A vigorous research and development program is continuing in an effort to improve the NEST capability for threat analysis, identification, diagnostics, and logistics support, thus assuring the the United States has personnel and equipment available and practiced for addressing the spectre of terrorist use of an improvised nuclear device or other radioactive material.

S. 1446, a bill to implement the Convention on the Physical Protection of Nuclear Material, would authorize the Attorney General to obtain assistance in dealing with these incidents from the Department of Defense personnel. It would enhance our capability to respond to nuclear incidents and serve the deterrent role that criminal statutes traditionally serve. This would, to some extent, help conserve NEST resources.

Internationally, enactment of the proposed legislation will enable the U.S. Government to ratify the Convention on the Physical Protection of Nuclear Material and to encourage other nations to do so. This Convention will enhance our helping other countries in meeting emergencies should they develop and provide a formal structure for worldwide cooperation in detection, identification, and recovery of nuclear materials. Other parties will also be required to enact similar criminal legislation which will improve our preventive and response capabilities worldwide.

We, therefore, believe this implementing legislation is extremely important and support its enactment as well as United States ratification of the Convention.

Senator **Mathias**. Our next witness is Mr. Robert F. Burnett, Director of the Division of Safeguards of the Nuclear Regulatory Commission.

STATEMENT OF ROBERT F. BURNETT, DIRECTOR, DIVISION OF SAFEGUARDS, NUCLEAR REGULATORY COMMISSION

Mr. **Burnett**. Thank you, Mr. Chairman.

I appreciate this opportunity to respond to your request regarding the Convention on Physical Protection of Nuclear Material.

Beginning in 1974, the NRC has significantly upgraded the requirements for the protection of licensed special nuclear material. In 1980, we completed the last phase of our program regarding protection of strategic quantities of highly enriched uranium and plutonium, identified in the convention as category I, at fixed sites and during transportation.

Current regulations require licensees and carriers to protect such materials against theft or diversion by both determined, violent assaults, and internal conspiracies. The details of this design basis threat are contained in our regulations, together with a series of specific measures for countering this threat.

For protection in transit, these measures include, among other things: For road shipments, transport in an armored car or specifically designed vehicle escorted by armored vehicles manned by highly trained armed guards equipped with radio communications; for air transport, transport in cargo aircraft with armed escorts, and a nonstop schedule from the last U.S. terminal. Similar requirements apply for sea transport.

In all cases of category I transportation shipments, arrangements are made between the licensee and the receiver of the nuclear material. Security arrangements and routings are approved in advance by NRC.

Senator **Mathias**. Now, can I interrupt you just at this point because I have visited the French reprocessing plant at Le Havre?

Mr. **Burnett**. Yes.

Senator **Mathias**. There, you see the canisters in which nuclear materials are transported from the user country. Will all of those canisters now have to be protected by these kinds of provisions during the transportation from Japan or Sweden, or wherever the nuclear materials have been initially used?

Mr. **Burnett**. Yes, sir, for high-enriched uranium and plutonium-carrying canisters, they will require protection. They do, however, now get protection outlined in a document which we refer to as INFCIRC 225, which is published by the IAEA.

Senator **Mathias**. What about spent rods?

Mr. **Burnett**. Yes; spent fuel will come under a lower type protection, but, yes, they will have to be protected also. It is covered in this convention.

Licensees are required to develop physical protection contingency plans, and individuals in charge of the shipments and shipment escort personnel undergo full field background investigations.

The level of protection afforded by NRC regulations for category I shipments and any storage incident thereto exceeds the most strict interpretation of the level specified in annex I to this convention. This level would also be applied to any category I international shipment that passes through U.S. territories by land, sea, or air.

The levels of protection for less than strategic quantities of highly enriched uranium and plutonium and for low-enriched uranium, identified in the convention as categories II and III, currently are comparable to the levels required in annex I.

NRC regulations for the protection of shipments of such materials provide for early detection of loss or theft through advance notifications, use of tamper-sealed containers, scheduled monitoring, and, for category II shipments, en route surveillance.

These regulations do not at the present time extend to international transient shipments passing through the United States.

Senator MATHIAS. Now, that means if the Japanese wanted to ship a canister through the United States to the French reprocessing system, or from it, it would not apply at present?

Mr. BURNETT. Our regulations have not been modified to pick up the convention until the action on the Hill is completed. In my next sentence, we say we have such modification underway, so it will.

Senator MATHIAS. After this legislation is passed?

Mr. BURNETT. Yes, sir, after your consideration up here.

Senator MATHIAS. So, that lends a special note of urgency to the legislation?

Mr. BURNETT. Yes, sir, it really does, for category II and III shipments. We already have those rules in place for transiting shipments of category I.

Similarly, NRC has no requirements regarding the protection of shipments of natural uranium, as set forth in annex I. We intend to amend our regulations to cover these matters.

In the past 3 years, the NRC conducted two generic studies to examine in detail potential threats to licensed nuclear activities in the United States. Both of these studies confirmed current NRC design basis threats and safeguard requirements.

Notwithstanding the fact that NRC is not aware of any imminent threats to the nuclear industry in the United States or to international shipments from or to this country, the potential still exists and the consequences that could result from the misuse of nuclear materials are so great that prudence dictates the application of effective physical security measures.

For shipments within the U.S. territories, primary reliance for immediate response to incidents threatening physical security is placed at the State and local police force level under arrangements established prior to shipment. The FBI, upon arrival at the scene, would assume control of the law enforcement operations, investigate incidents involving theft or sabotage, and conduct operations as necessary to locate and recover any stolen nuclear material.

For sea shipments in U.S.-flag carriers, the U.S. Coast Guard would be the responsible agency. The Coast Guard would have at its disposal naval ships in the vicinity and patrol or search aircraft.

If U.S.-origin nuclear material were being transported in a foreign-flag carrier in international waters, the Coast Guard would only respond to the security incident only at the request of the country of registry.

In regard to shipments of special nuclear material by air, the Air Transportation Security Act of 1974 places the responsibility for directing law enforcement activities in response to aircraft piracy exclusively with the FAA. Other Federal agencies are directed by the act to provide, upon request, such assistance as may be necessary.

The Convention for the Suppression of Unlawful Seizure of Aircraft provides certain assurances that persons engaged in aircraft piracy will be apprehended upon landing in a foreign country.

The NRC strongly supports the convention and the implementing legislation for the following reasons. The bill defines certain offenses not currently covered by Federal statutes. The explicit establishment of Federal jurisdiction over such offenses removes the uncertainties that currently exist.

The express authority to engage the military in the enforcement of the provisions of this bill overcomes the limitations of other laws pertaining to the furnishing of assistance by the Army and Air Force in law enforcement activities. Passage of this bill will provide other nations with the incentive to do likewise.

Some changes in our current NRC regulations would be necessary to support the provisions of this convention; specifically, extension of the existing Transient Shipment Rule to cover category II and III nuclear materials and spent fuel, which you brought up earlier, Senator; adding a requirement for advance notification to State parties in which nuclear material, as defined by the convention, is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter; requiring advance notification to the receiving country of any shipment of natural uranium in quantities exceeding 500 kilograms and, conversely, requiring notification of shipments of such material into the United States.

I would like to maybe correct one thing that Mr. Wade said a little bit earlier. He was referring to the use of NEST at the Erwin facility in Tennessee to a diversion of material. I would like to correct it, and I am sure with his agreement, to a possible diversion of nuclear material at Erwin.

As he remembers, that investigation, which lasted several months, did not fully locate the material that was missing from inventory, nor did we establish any data to say that it was stolen. However, we could not discount that possibility.

Mr. **Wade**. Mr. Burnett is absolutely correct. I got my data confused; I apologize, Mr. Chairman.

Senator **Mathias**. Well, can you agree that there was a mysterious disappearance of some material?

Mr. **Wade**. Well, I was referring to an incident in Wilmington, N.C., in which low-enriched nuclear material from a fuel rod manufacturing facility was stolen by an extortionist and taken out of the plant. We were involved in assisting the FBI. All of the material was recovered and there was an arrest and conviction.

Senator **Mathias**. But there was a theft?

Mr. **Wade**. There was a theft.

Mr. **Burnett**. At that facility, yes.

Senator **Mathias**. So, it has happened.

Mr. **Wade**. It has happened.

Senator MATHIAS. Now, the Tennessee episode about which you have now come to an agreement is a mysterious disappearance?

Mr. BURNETT. Well, Troy just accidentally, referring to that—I believe it was around 61 kilograms of low-enriched uranium—had used Erwin. It was the GE, Wilmington, facility as opposed to Erwin, and that was an actual theft; that is correct.

That completes my testimony, sir, and I will now try to answer any questions you may have.

Senator MATHIAS. Well, let me ask you to review something that you touched on in your statement, just so that I have it clear in my own mind.

In the event of theft or mysterious disappearance, who is the first one on the scene?

Mr. BURNETT. Usually, the licensee notes the problem, so, of course, they are the first ones there. They notify the NRC regional offices and the FBI.

Senator MATHIAS. But it is your telephone that is the first one to ring?

Mr. BURNETT. Probably, more likely the field office's, sir. There are five field offices within NRC.

Senator MATHIAS. But I mean NRC telephones are the first ones to ring?

Mr. BURNETT. Yes, sir, then, offices in Washington—specifically, my division—probably would be the next called. The FBI could have already been called at that time, but in the case of Erwin, they were not, and we called in the FBI. In the case of the Wilmington incident that Mr. Wade referred to, the FBI sort of got it simultaneously with the NRC.

Senator MATHIAS. But the normal practice would be if NRC is alerted to the disappearance of some nuclear material, you would immediately contact the FBI, assuming they were not already aware of it?

Mr. BURNETT. Yes, sir, and the DOE. And then, depending upon the investigation at that point, NEST may or may not be called in. In the case of Erwin, Tenn., NEST was called in, and also, of course, Wilmington.

Senator MATHIAS. You have referred to the need for some additional regulations to implement this legislation when it is passed. Will there have to be any further training of personnel to enforce these regulations?

Mr. BURNETT. Certainly, there are going to be some people involved in transportation that have not heretofore had requirements like this. So, there will be some, but very minimal. But to the industry as a whole, there is no unusual training.

Senator MATHIAS. What about any military force equipped to respond either under the present arrangements or under the provisions of this bill? Will the Department of Defense have any special requirements?

Mr. BURNETT. I guess I am not the exact person to answer that. If the military was required, when we deal with the DOE, I assume the DOE would ask for such support, or the NRC could go to the DOE and suggest it. In either event, I believe the DOE would go to the DOD.

Senator MATHIAS. Do you have any comment on that?

Mr. **Wade**. That is correct, Mr. Chairman. We have worked with the Department of Defense. We would be happy to provide details of that for the record if you would like.

Senator **Mathias**. I think that would be useful because the coordination of the different branches of government on this very delicate subject, it seems to me, is important for us all to understand.

Mr. **Burnett**. I have also been just informed that the bill itself refers to the Attorney General calling in the military.

Senator **Mathias**. Well, that is a new element. Of course, the FBI is usually associated with the Attorney General, but if we get another actor in this field, I think it is even more important to understand how it is going to be coordinated and how each actor is going to react to the other actors on the stage. So, I think your further explanation of that would be a useful addition to the record.

Mr. **Wade**. We do have a memorandum of understanding with the DOD and with the FBI, and what I was referring to, Mr. Chairman, were other special arrangements, which we will supply for the record.

Senator **Mathias**. Fine.

[The documents referred to by Mr. Wade follow:]

[Hearing Before the House Appropriations Committee,
Subcommittee on Defense]

WEDNESDAY, JUNE 24, 1981.

COUNTERTERRORISM PROGRAMS

WITNESSES

LT. GEN. PHILIP C. GAST, USAF, DIRECTOR, J-3 (OPERATIONS), ORGANIZATION OF THE JOINT CHIEFS OF STAFF

COL. R. A. KVEDERAS, U.S.A., SPECIAL OPERATIONS DIVISION, J-3, ORGANIZATION OF THE JOINT CHIEFS OF STAFF

COMDR. JOHN F. SANDOZ, USN, SPECIAL OPERATIONS DIVISION, J-3, ORGANIZATION OF THE JOINT CHIEFS OF STAFF

LT. COL. WILLIAM J. KENNEDY, ASSISTANT FOR COUNTERTERRORISM ACTIVITIES, OFFICE OF THE DIRECTOR FOR PLANNING AND REQUIREMENTS POLICY, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (INTERNATIONAL SECURITY POLICY)

LT. COL. KEITH M. NIGHTINGALE, OFFICE OF THE DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS, DEPARTMENT OF THE ARMY

LT. COMDR. JOSEPH QUINCANNON, OFFICE OF THE DEPUTY CHIEF OF NAVAL OPERATIONS FOR PLANS, POLICY, AND OPERATIONS, DEPARTMENT OF THE NAVY

LT. COL. RICHARD B. GADD, OFFICE OF THE DEPUTY CHIEF OF STAFF FOR PLANS AND OPERATIONS, DEPARTMENT OF THE AIR FORCE

INTRODUCTION

Mr. ADDABBO. The committee will come to order.

This morning we intend to review the counterterrorism program of the U.S. A CIA publication of May 1981 describes international terrorism as terrorist acts conducted with the support of a foreign government or organization and/or directed against foreign nationals, institutions, or governments.

The foregoing CIA document reviewed the number of international terrorist incidents since 1968, except for those acts conducted by the Provisional Irish Republican Army and the Basque Fatherland and Liberty Movement, which have been more or less local in scope. Between the period 1968–1980, there have been 6,714 international terrorist incidents resulting in 3,668 persons killed and 7,474 wounded. There were more total casualties in 1980 than during any previous year since 1968.

There were 278 attacks on Americans in 1980 and 34 of these incidents caused the death of 10 Americans and the wounding of 94 others. Damage to U.S. property was recorded in 97 incidents. Attacks on Americans occurred in at least 51 countries during 1980. Thirty-three percent of all attacks against Americans occurred in Latin America and 20 percent occurred in the Middle East.

Last year marked the first year that a large number of deadly terrorist attacks were carried out by national governments. Also during 1980, there was a sharp increase in right-wing terrorist activity, particularly in Europe. On the positive side, incidents involving hostages and barricades were more successfully countered in 1980, as governments became better equipped to deal with such situations. Two prominent hostage takings—the Iranian Embassy in London and a skyjacking in Turkey—were countered successfully by military force.

In view of the increasing incidents of international terrorism, the Committee is anxious to determine what the U.S. has done to prepare itself to counter such terrorism subsequent to the U.S. abortive attempt to rescue our hostages in Iran on April 24, 1980.

We wish to learn more about the organization of the Counterterrorist Joint Task Force (CTJTF), when it was formed, its size, logistic and intelligence support, the scope of its training and readiness to counter terrorism, and total cost of this force. We need to understand the ability of this counterterrorist force to move to any part of the world where Americans are held hostage or otherwise threatened. And finally, we are interested in reviewing the jurisdictional understandings between this military organization and the FBI in the event of terrorist incidents in the U.S.; the relationship of this counterterrorist force with other similar government organizations; and the doctrine and plans of the Command to rescue Americans threatened in a foreign nation, whether it be friendly or relatively unfriendly to the U.S.

We are pleased to welcome Lieutenant General Philip C. Gast, the J-3 of JCS, and his supporting witnesses. We have a great deal to cover this morning, so we shall place your statement in the record and request that you provide a brief summary at this time.

The Chair recognizes the gentleman from Pennsylvania.

MOTION AND VOTE TO CLOSE HEARINGS

Mr. **Murtha**. Mr. Chairman, I move the hearing this morning on counterterrorism and the hearing tomorrow on Navy shipbuilding programs be held in executive session because of the classification of the materials to be discussed.

In addition, I move the transcripts and related materials developed in the counterterrorism hearing be handled in accordance with the Appropriations Committee's special interim procedures for protection of intelligence information.

Mr. **Addabbo**. Under the rules, a roll call is required.

Mr. **Murphy**. Mr. Addabbo?

Mr. **Addabbo**. Aye.

Mr. **Murphy**. Mr. Chappell.

[No response.]

Mr. **Murphy**. Mr. Murtha.

Mr. **Murtha**. Aye.

Mr. **Murphy**. Mr. Dicks.

[No response.]

Mr. **Murphy**. Mr. Wilson.

[No response.]

Mr. **Murphy**. Mr. Hefner.

Mr. **Hefner**. Aye.

Mr. **Murphy**. Mr. Ginn.

Mr. **Ginn**. Aye.

Mr. **Murphy**. Mr. Whitten.

Mr. **Whitten**. Aye.

Mr. **MURPHY**. Mr. Edwards.

Mr. **EDWARDS**. Aye.

Mr. **MURPHY**. Mr. Robinson.

[No response.]

Mr. **MURPHY**. Mr. McDade.

Mr. **McDADE**. Aye.

Mr. **MURPHY**. Mr. Young.

[No response.]

Mr. **MURPHY**. Mr. Conte.

[No response.]

Mr. **MURPHY**. Seven affirmative votes, Mr. Chairman.

Mr. **ADDABBO**. This hearing is now closed. General Gast?

General **GAST**. Thank you, Mr. Chairman.

SUMMARY STATEMENT OF GENERAL GAST

We are pleased to appear before you and appreciate your interest. Before proceeding further, I would like to introduce members who will assist me in answering any particular questions in the event more detailed information is required than I might have.

On my right is Colonel Kvederas, who is on the Joint Staff and works for me directly. On my left is Lieutenant Colonel Kennedy from the OSD staff. Commander Sandoz, the second from the right, who is also on my staff. Lieutenant Colonel Nightingale, from the Army staff. Lieutenant Commander Quincannon, from the Navy staff, and Lieutenant Colonel Gadd, from the Air Force.

I have presented two handouts for you. One is for the record, which you may wish to retain. That includes and is an OSD statement that concerns how the DOD fits in support of our overall counterterrorism policy within the United States.

[The statement follows:]

Mr. Chairman and members of the committee, I am pleased to provide you with this statement because of our common interest in finding effective ways of dealing with terrorism.

Terrorism poses a worldwide threat to our citizens and to our national interest. The Department of Defense supports the strong and purposeful actions this Administration is taking to counter terrorism.

The Department of Defense counterterrorist program is part of the broader USG antiterrorist program that integrates many federal agencies using a four-pronged approach to reduce terrorism: prevention, deterrence, prediction, and response.

Prevention includes initiatives to discourage foreign governments from supporting terrorism and building a broad international consensus that terrorist acts will not be tolerated regardless of cause. In that regard, this Administration has publicly put terrorists on notice that they can expect no concessions from us. We will use all appropriate resources at our disposal, including the use of military force, to respond to acts of international intimidation and extortion.

Deterrence includes increased physical protection and security for likely targets of terrorism. In this regard, we have given priority to securing our weapons storage sites and protecting our personnel who are abroad.

Prediction of terrorist acts includes intelligence collection and statistical analysis by a variety of agencies. Predictive information identifies which targets need additional security and enables law enforcement defense agencies to organize, equip, and train operational units capable of rapid response to actual terrorist acts. To the extent we are able, we exchange data with intelligence agencies so that we might better counter terrorism.

Response embraces the full range of diplomatic, political, economic or military means at our disposal to deal with terrorism. For this purpose, we maintain special units trained in counterterrorist (CT) operations, which I will discuss later.

In fulfillment of these major responsibilities, the Department of Defense is represented on the Interdepartmental Group on Terrorism, chaired by the Department of State under the aegis of the National Security Council. We believe this is an effective organizational structure which brings together the key agencies and departments of the Executive Branch in the US Government antiterrorist program.

The Department of State is responsible for developing and refining policy and operational guidelines for reaction to international terrorist acts directed at US citizens and interests abroad. In international terrorist incidents, law enforcement actions and the safe release of hostages are the responsibility of the host government.

The Department of Justice develops policy and guidelines for responding to acts of terrorism in the US. The responsibility for managing domestic terrorist incidents rests with the Attorney General who has delegated this function to the Deputy Attorney General.

The FBI, as lead agency for most domestic terrorist incidents, provides the initial tactical response through its Special-Agent-in-Charge at the scene. In resolving serious domestic terrorist incidents where necessary action is beyond the capabilities of non-military federal resources, the President may authorize the use of military CT forces.

The DoD supports, within the law and established policy, other governmental agencies that have a counterterrorism role, principally with our transportation and communications resources and technical advice. We also have the capability to respond to a terrorist incident with military forces if necessary.

Within the Department we have recently taken steps to improve our ability to cope with terrorism. Most noteworthy is the establishment in October 1980, of the Counterterrorist Joint Task Force (CTJTF). It is comprised of dedicated military units from the Army, Navy and Air Force which are specifically trained, equipped and organized to deal with a wide range of terrorist activities. ———.

In summary, gentlemen, the problem of terrorism is a serious one and we are taking steps to combat it. We are improving our protection at weapons storage sites; educating our people to the threat; and organizing, training and equipping special units to deal with terrorists. These steps, together with other Executive Branch efforts, should help deter terrorism and improve our ability to cope with it if it occurs.

General GAST. The second is a handout which I propose to walk through with you, and at any time you may stop and ask questions as I go through it. It is designed to give you a framework from where we are, as a basis for questions, either as we go through or at the conclusion of my presentation.

I would wish to re-emphasize—and I thank you for your comments, Mr. Chairman—the sensitivity of the information. It is secret sensitive, sensitive in the sense that we wish to do all we can to protect the identity of our counterterrorist unit. That is important ———.

ARTICLE IN WASHINGTON POST

Mr. ADDABBO. We read an article in today's Post. The sources described the possible participation of the U.S. anti-terrorist team in Thailand.

The closing paragraph says, "The sources describe U.S. participation as a 'target of opportunity' for the American anti-terrorist team, a secret outfit training at Fort Bragg, North Carolina."

Are they accurate?

General GAST. They are not. ———.

The Department of Defense did not receive any request, nor did it offer any assistance and there was no material provided from the Department of Defense.

I might add, however, that it is our government policy, and our policy, that if a terrorist incident does occur and U.S. interests are involved, we are prepared to offer technical assistance, in the sense of assuring world order.

We are prepared to do that. We do not force ourselves on countries or governments. But we are prepared.

In this case there was not any request made of the Department of Defense to participate.

I also might add another reason for our security and our drive for it, in addition to those I have mentioned earlier, is the possible reprisal of identification of our people if they were involved in an operation. That always has to be considered. So we very much want to keep our people out of——

Mr. **Addabbo**. I assure you there has never been a leak here.

General **Gast**. I think it would be useful if you understood our policy and the reason for it. ———.

SPECIAL OPERATIONS REVIEW GROUP RECOMMENDATIONS

— SPECIAL OPERATIONS ADVISORY PANEL

— COUNTERTERRORIST JOINT TASK FORCE

Addressing the first chart, gentlemen, if I may, you know of the unclassified Holloway report: the Joint Chiefs of Staff formed the group not long after the Iranian rescue mission. Two principal recommendations came from this group which were acted upon by the Joint Chiefs of Staff. One was a special operations advisory panel.

The idea here was to have an independent group of people who would work for the Joint Chiefs of Staff, to advise them——

REASON FOR SECRECY

Mr. **Whitten**. May I interrupt? I need to attend another meeting, Mr. Chairman.

It disturbs us on this committee, some time, to read in the paper what we have been told that day. But with respect to terrorists, and having this organization, I learned as a former district attorney that if folks knew you had something and you were on your toes and going to use it, it might be helpful.

I don't know who makes these decisions, but the American people would like to know you are going to deal with terrorist threats. Such publicity might serve to deter terrorism. You can catch a few people and send them to the penitentiary. But if everybody who might do it thought they might be the ones you caught, I found out the threat was better than the fact, in simple law enforcement.

Now, who made this decision of keeping this thing quiet?

General GAST. We have not——

Mr. WHITTEN. Don't tell me the community.

General GAST. I understand.

Mr. WHITTEN. Give me names.

General GAST. We have not sought to give the American people or anyone else the impression that we do not have a counterterrorist unit. We have said we do.

Mr. WHITTEN. I am talking about the decision this was the proper way to publicize it. Because it seems to me open to question.

General GAST. Yes, sir. The decision was made at the JCS level and the recommendation to the Secretary of Defense was that it should be held this way. I might offer——

Mr. WHITTEN. Do you think it is better to catch a few or stop many?

General GAST. It is our perception and our analysis that the kind of terrorist activities that this unit, this capability would respond to, is becoming more sophisticated each day. They are out for political gain. They are out to make a political point.

As they become more sophisticated in this approach, it is far better, we believe, for us if they do not have a precise identification on even location of our capabilities. We can deter and probably have deterred small and less sophisticated groups. But we are primarily concerned about this new turn where we see organizations overseas.

Mr. WHITTEN. Pardon me for drawing the illustration. I have heard a whole lot on your side of the table here, but from my own experience and observation it is a lot better to have a highway patrol man ride up and down and keep people from speeding than hide behind a bridge and catch one now and then. That approach is not nearly as effective.

The only reason you might not want to tell the world is because you might not have much success, like Atlanta. So if you are not going to get somewhere, you might want to keep it secret so they won't think you have failed. But if you want to do the job, the best thing it strikes me to do is let everybody know.

You say keep secret. I have been here when we had an investigation on military procurement, and they stamped "Secret" on it so we supposedly couldn't tell anyone what they were doing.

Is there any way to change this decision?

General GAST. We constantly review it.

Mr. WHITTEN. I am talking about the whole question of classification.

General GAST. You would suggest that we would open up on where they are?

Mr. WHITTEN. I am just saying there is another side.

General GAST. I understand. I accept that. I would not wish to indicate we do not review it.

It has been a matter of discussion within the JCS, and within our staff, as to whether we should or not.

Mr. WHITTEN. I am just talking about the whole question. There are two sides to it. I just wonder if you have given proper thought to the other side.

General GAST. We have acknowledged the counterterrorist unit. One of our concerns is how much the public should feel that we are prepared to do. It is a careful balance. I assure you we will continually review the policy on that.

Mr. ADDABBO. General, on the chart before us, the first page is stamped "Unclassified". What I would ask you to do is after the hearing—this is strictly your discretion—is to look at the hearing record, and if it can be sanitized within your discretion to make it an unclassified document, the Committee would like to print a portion of it.

General GAST. I understand, sir.

In August, the Secretary of Defense——

Mr. ADDABBO. Excuse me. When I say that, I don't want to see what we see a lot of times, two words and then a blank and two more words, because that brings up more questions. We would like a continuous transcript, if that can be done.

General GAST. I understand, sir. We will work to comply with that.

In August of 1980, the Secretary made a decision to form a counterterrorist task force. In the October-November time period, it was formed. In January it assumed operational responsibility for the counterterrorist mission. We continued to have the capability to conduct counterterrorist actions throughout that period, but we did not have the formal organization put together, tested and tried, until the January time period.

[CLERK'S NOTE.—Classified chart removed.]

On the next chart we show the mission we have given them, which is against U.S. interests, citizens and properties, which is rather broad-ranging. I will go into more detail later.

Reference is made to the term "unilaterally" in support of a unified command. I will expand on that later.

[CLERK'S NOTE.—Classified chart and discussion removed.]

Mr. CONTE. Mr. Chairman?

Can this committee and members of this committee watch an operation like that someday? In the fall, maybe?

General GAST. Let me explain and say that I do not have authority to say yes or no. The Secretary of Defense has indicated he reserves that.

The people who have visited the units so far are those who would be in direct support of the operation, or in the decision chain, so that they would have firsthand knowledge. We have not had visitors in other than those capacities. We have had previous requests from the Congress. They have not been honored.

I believe it is safe to say, though I cannot speak for him, perhaps Colonel Kennedy can, the Secretary's position is that we wish to maintain the cover, that visitors complicate things. We wish to keep the techniques and the specific capabilities and identification of the force down to an absolute need to know.

I understand your position. You would say that you need to know because you are responsible for funding it. All I say is that has been our policy and practice up until now, sir.

Mr. CONTE. Thank you.

NUCLEAR EMERGENCY SEARCH TEAMS

Mr. MCDADE. There was a press account that said we had developed a very high capability to determine whether we were under the threat of a nuclear act. If someone were going to set one off in city X; we had a very high capability to determine whether in fact there was a nuclear device present and this capability was very, very high and accurate.

Is that correct?

General GAST. I believe it is. I do not know of the press account.

Colonel KVEDERAS. I can respond to that. I am familiar with that question. I answered it before.

Specifically, we have teams in the Department of Energy, the Nuclear Emergency Search Teams, for use within the United States, and the Defense Nuclear Agency has the same type capability for use overseas. They have the technology and the equipment ———.

Mr. MCDADE. Thank you.

[Brief recess.]

Mr. ADDABBO. General?

ORGANIZATION

General GAST. Thank you, Mr. Chairman.

[CLERK'S NOTE.—Classified chart removed.]

Gentlemen, I would like to proceed to the handout that we provided to you, to that chart that has NCA and JCS at the top. Perhaps it would be useful if I explained some of the acronyms.

NCA is composed of the President and the Secretary of Defense, the National Command Authorities. JCS is Joint Chiefs of Staff. Unified Commander could be, for example, Pacific Commander or European Commander. Components would be something like United States Air Forces of Europe under CINCEUR. Of course, COMCTJTF is our counterterrorist unit.

It is our general conclusion that as we look at contingencies around the world, if the NCA directed application of the CTJTF, that the Commander would work for the commander in chief in that region. For example, CINCEUR in Europe, or the Pacific Commander, Admiral Long in the Pacific, or SOUTHCOM, and that is indicated as we go in a vertical below JCS. COMCTJTF would work for him and be under his operational command, and other components might be in support of him.

If we go to a region, however, where we do not have a CINC that is in location, or if it appears to be advantageous to do so, then the CTJTF reports directly to the NCA, through the JCS.

We have the option of going either way, but when we look at the various scenarios, we see them working for the commander in chief in that particular region.

Mr. MURTHA. General, I am not clear on this. If you have a very, very sensitive terrorist activity in the commander's area, you say there is a possibility the unit would be directly connected to the Joint Chiefs of Staff rather than the commander in that area?

General GAST. There is that possibility. That possibility would exist. We leave that as an option.

Mr. MURTHA. What if it is a nuclear weapon.

General GAST. Not necessarily, sir. It might be on the fringe area, his communications or his region, where we put them in there directly, and where he would not have supporting forces.

Although it might be more advantageous, we would never conduct an operation in his region without his knowledge and coordination, I can assure you. ———.

Mr. MURTHA. General, the situation in Atlanta, where the FBI went in and there is very poor coordination between the two agencies in a tragic situation.

Now, how do you resolve that natural inclination for dissention when you have two commanders? Say you have an ambassador involved. Who is the commander if you have a U.S. ambassador in the country?

General GAST. The U.S. ambassadors have a general feel for our capability. They know we exist. If an event occurs there is no question that the United States ambassador is the senior government official and responsible for activities within that country.

If an event occurred in country X, the first thing I would envision is that the line of secure communications, both voice and teletype, would go into effect, getting the ambassador's assessment. If there is a judgment that an application of military force is to be applied, it is worked in coordination with him.

Mr. MURTHA. When you say in coordination, is he in charge?

General GAST. He is not responsible for the decision. Once the decision is made by the NCA, the President, to conduct a military operation, he is not in charge of that military operation. He is read into it, coordinated with, and so forth. But any time that we initiate a military operation, whether it is overseas or in support of domestic agencies—which I can get into later—the military commander should be in charge, as directed by the NCA. We believe this is a proper procedure. ———.

In regard to the liaison within the DOD, so that we don't have confusion with any particular commander in chief, we have liaison visits to them, they come to conferences, they know of our capabilities, they work with us on development of plans.

The commander of CTJTF has personally gone to each one of the commanders in chief, the four-star level, and their staffs and briefed on the capabilities. We feel we have proper relationships worked out. We cannot assure you that there will not be any confusion in anything that breaks out because intelligence is never as good as you want. But we have worked very hard within the interdepartmental group to go through these policies and procedures, to clarify them, to have an understanding with State Department and all the other agencies that might be involved.

Mr. MURTHA. Can the ambassador veto an action that is ordered by the commander? I am thinking of something that would not be in the best interests of the United States in the opinion of the ambassador. Could he insist that the commander not initiate action. Where would the decision be made? The commander himself couldn't override the ambassador's decision?

General Gast. The way I envision a scenario is the interdepartmental group would go into action in the Department of Defense. There would be consultation by the ambassador and consultation with the ambassador before the President made his decision. He would weigh proposals.

There is a likelihood that there would be more discussion once the CT force arrives in the country. If the ambassador wished to register a concern he would go back to the President or the State Department and say, "I would really rather do this," but once the mission has been defined and the implementation order directed by the NCA, the commander works for the NCA through the JCS whether he is a CINC or the CTJTF commander.

Mr. Murtha. So the ambassador does not have the ability to veto any action a commander makes?

General Gast. Not once the President directs it. I don't see a problem with that.

Mr. Murtha. The ambassador is a direct representative of the President.

General Gast. Yes, sir; but he works for the President, just as the military commander does. There would be a great deal of coordination there.

Mr. Murtha. I always worry about decentralized control. I know we have tremendous communications, but with the White House trying to direct something going on in the field is one of the problems we had in Vietnam. The commander would fly down there and direct the fire team on what was going on in the field, which certainly caused a lot of problems.

General Gast. I cannot speak for the future, nor can I predict as to how any event would develop. But it is my understanding, my sense, the purpose of the government, is that once the mission is given to the military commander, he has the responsibility for it.

Even though we have communications back here to Washington—there is no intention to guide and direct him once it has been approved. ———.

We felt they needed to be a separate agency. There would be excruciating detail involved in the plan and approval—JCS would be responsible for that and would require details before they recommend to the Secretary of Defense and the President that it is a feasible operation.

But once that has been conducted, there is only one way to do it—to give the commander responsibility and authority. From practices, it would likely develop as I have described.

Mr. Addabbo. General, do you know which size force ———?

General Gast. Yes, sir, we do. I am going to get to those later. Colonel Kvederas, can you give me some numbers?

Colonel Kvederas. Yes, sir, we have ———.

Mr. Addabbo. Has your organization ever exercised under the command of a CINC or joint operation with a CINC?

General Gast. Yes, sir.

Mr. Addabbo. Who would control, you or the CINC commander?

General Gast. The CINC would control them.

WAR POWERS RESOLUTION

Mr. Addabbo. Let's discuss this article.

[From the Washington Post, June 24, 1981]

AMERICAN TEAM SECRETLY AIDED COMMANDOS IN JETLINER RESCUE

An American anti-terrorist team secretly aided an Indonesian commando force that freed 55 hostages on a hijacked Indonesian jetliner in Thailand, sources said yesterday.

The United States supplied all of the equipment for the successful March 30 assault—"right down to the screwdrivers, literally"—but no Americans took part, the administration sources said.

The sources said President Reagan personally authorized the assistance on March 29, the day before he was shot in Washington. U.S. participation in the commando operation appeared to mark the first evidence that Reagan's administration plans to back its verbal assaults on terrorism with concrete steps to combat it.

The Pentagon neither confirmed nor denied U.S. participation, its policy is not to comment on such operations.

The new details about the assault also marked the first acknowledgment that an Indonesian and not a Thai commando unit carried out the successful raid on the hijacked aircraft. None of the announcements from Bangkok about the raid mentioned Indonesians.

The sources described U.S. participation as a "target of opportunity" for the American anti-terrorist team, a secret outfit that has been training at Fort Bragg, N.C.

Members of the team sent to Bangkok acted as technical advisers for the operation.

Mr. ADDABBO. Suppose this article of today was true, that we were involved. If we did get involved, would that be a direct violation of the War Powers Resolution.

General GAST. I do not believe that it would come under the War Powers Resolution.

Mr. ADDABBO. It is involving American forces in a foreign country.

General GAST. Yes, sir, but with a terrorist act, we do not and have not judged that to be coming under the War Powers Resolution. We have looked at several scenarios. Some possibly would, but we do not believe something like this would come under the War Powers Resolution.

There could be a requirement for consultations or reporting, as you know, within 48 hours, but we do not believe the example would come under the War Powers Resolution. We have done exhaustive studies to comply. One of our checklists on any military operation, is a thorough examination of the intent of the War Powers Resolution. It is on my checklist. We have a special staff of legal people. That is an absolute requirement before any deployment order is given to review the War Powers Resolution.

Mr. ADDABBO. Would it be possible to supply for the record the finding of your counsel?

General GAST. I would do that, yes, sir.

[The information follows:]

Although determination of the Constitutional powers of the President to involve U.S. Armed Forces in counterterrorism cooperative ventures, particularly where U.S. citizens are involved, is not within the authority of the Legal Adviser to the Chairman of the Joint Chiefs of Staff, it is his opinion that the President has that Constitutional power, whether it be under his foreign relations powers or his powers as Commander-in-Chief. The War Powers Resolution does not alter the Constitutional power of the President (Section 8(d)(1); however, it does impose some consultation and reporting requirements upon the President. With respect to evaluating those requirements of the War Powers Resolution in relation to a specific deployment, the normal procedures are described in the attached letter of October 7, 1974 from the Secretary of State to the Chairman, Committee on Foreign Affairs of the House of Representatives. As noted in that letter, the Legal Adviser to the Chairman of the Joint Chiefs of Staff informs the General Counsel of the Department of Defense of all troop deployment actions routed through the Chairman's office which could raise a question as to whether a report to Congress is required. The General Counsel and the State Department Legal Adviser are responsible for determining, on behalf of their respective Secretaries, when reports are required. If they determine that a report should be made, they draft a report and submit it to the President's Counsel for review and final decision.

The Legal Adviser to the Chairman was not advised of any deployment related to the newspaper report. The newspaper account does not provide sufficient details to determine what action the Chairman's Legal Adviser would have taken had he been advised that U.S. Armed Forces were to be involved in the rescue mission. He would have inquired into the proposed relationship between U.S. and Indonesian personnel, the position of Thailand with respect to a rescue mission in its territory, the likelihood that U.S. Armed Forces would be introduced into hostilities, whether the U.S. Armed Forces would be "equipped for combat", and regarding the numbers of U.S. Armed Forces already in Thailand who were "equipped for combat." Based on analysis of those and any other related facts that might develop, the Legal Adviser would determine whether the DOD General Counsel should be advised. The Chairman's Legal Adviser resolves all doubts on applicability of the War Powers Resolution by bringing the matter to the General Counsel's attention. In the type of case reflected by the newspaper article, ultimate Executive Branch determination of the applicability of the War Powers Resolution would have to consider whether the mission, which appears to have been essentially a one-time law enforcement operation, was within the scope of the War Powers Resolution. Certainly, with the consent of the Governments of Indonesia and Thailand, it was not the type of operation in which U.S. advisory involvement could lead to involvement in war.

THE SECRETARY OF STATE
WASHINGTON

October 7, 1974

Dear Mr. Chairman:

On July 16 you wrote to me regarding the implementation of the War Powers Resolution. In particular, you asked what arrangements had been made within the Executive Branch to insure "full and timely compliance" with the reporting requirement of Section 4 of the Resolution. I am pleased to inform you that since my September 7 letter to you on this matter, Secretary Schlesinger and I have agreed that our respective legal counsels will be jointly responsible for bringing immediately to our attention cases where it would be appropriate for us to recommend to the President that a report be submitted to the Congress pursuant to Section 4 of the War Powers Resolution.

With regard to the question of access to information, I understand that several months ago the Office of the Secretary of Defense instituted an arrangement whereby the Legal Adviser to the Chairman of the Joint Chiefs of Staff informs the Department of Defense General Counsel of all troop deployment actions routed through the Chairman's office which could raise a question as to whether a report to the Congress is required. In implementation of that arrangement a written instruction was promulgated establishing a War Powers Reporting System within the Operations Directorate of the JCS. Arrangements have been made for this Department's Legal Adviser to receive the same information as is supplied to the DOD General Counsel. Consultations between the two departments' legal counsels will be arranged as needed.

The Honorable
Thomas E. Morgan,
Chairman, Committee on
Foreign Affairs,
House of Representatives.

George Aldrich, the Acting Legal Adviser, would be pleased to arrange for further discussions of this matter with you or with members of your staff if you so desire.

Best regards,

Henry A. Kissinger

General Gast. Gentlemen, if there are no more questions I will move to the next chart entitled "CTJTF Is Basis For CT Program."

[Clerk's note.—Classified chart removed.]

Mr. Edwards. Mr. Chairman?

I have to go to a mark-up in the Transportation Subcommittee, I need to ask just one question, if I may.

Mr. Addabbo. The gentleman from Alabama.

RELATIONSHIP TO RAPID DEPLOYMENT FORCE

Mr. Edwards. Is there any relationship whatsoever between this operation and RDF?

General Gast. No, sir, there is not. There are two separate missions. It is not envisioned they would be used for the same mission. The CTJTF has wartime missions. We feel with these capabilities that we have, with the amount of funds we are putting into them, they would be in support of wartime missions, but not for any particular CINC and not necessarily for the RDJTF.

Mr. Edwards. Are you going to become another RDF in a sense grow like topsy until all of a sudden you are another big conglomerate?

General Gast. No. I can assure you many of us are very sensitive to that. There are several reasons why. One is, of course, we want it to be capable of the kinds of things we discussed earlier. Secondly, for every man we put into an organization that can help us in other war plans and capabilities—funds are short. We do not wish to develop other capabilities. We want this to be a responsive nonbureaucratic unit—I don't claim to indicate that large organizations are or are not. But we want this one to be lean and mean. I assure you that I must in great detail justify every manpower space applied to the CTJTF, just within that context.

SCALE OF OPERATIONS

Mr. Edwards. The chart that you showed us back two or three charts ago, those numbers include all of the people involved?

General Gast. ———.

Mr. Edwards. I really must go to another meeting. Rightly or wrongly, I guess we always compare these kinds of units with what Israel does or has done. Are you capable of that kind of thing? Are you already growing too big to have a few good men, and go in and do the job?

General Gast. We are capable of doing that. We have greater capabilities because we can deploy.

Mr. **Edwards**. I don't want to belabor it, Mr. Chairman, but it seems to me the one great thing that separates this country from all others is we do everything on a grand scale. We don't seem to have the ability to do things on what I perceive to be a small scale where needed.

I hope that before all this is over, I will be proven wrong again. It seems to be our great fallacy in this country, and especially in the military. Everything is done on too large a scale.

General **Gast**. I can only add, sir, one of my concerns is to keep these people in the field. We are very protective of them. I try to assure they don't get bound up in paperwork and policies and are not running to Washington more than they need to be, that they are out in the field shooting, or doing whatever they ought to be doing, to orient it in that fashion.

If you were to visit their headquarters, you would probably find every man in camouflage fatigues. It will be up to us to see to it that we don't get away from that orientation.

Mr. **Edwards**. Okay.

Mr. **Addabbo**. General, before we leave this subject—we are always trying to stop duplication wherever it shows itself—if we are developing this counterterrorist force, ———.

General **Gast**. The basis for those units that Colonel Kvederas spoke to a moment ago is ———.

However, because of their special capabilities, they have an additional counterterrorist mission; in other words, they are available.

We train them. If we were to do away with the CT mission, however, we would not reduce ——— forces or the equipment that they have. We would not want to actually take part of the CT unit and assign it ——— because we then lose the flexibility to deploy where we might need to, and therefore require more CT forces.

But more than that, they would not be able to exercise and train together as a unit.

I wish to emphasize, however, this does not mean that we do all of our exercises and training here ———.

Mr. **Addabbo**. General, what concerns me is we know there is jealousy of turf. If ——— had its own little group there, he would rather say, "I will do it myself," when he really doesn't have the manpower to do it himself. He may go in and cause greater problems, and calling you in later would just add to the problem than if it had been coordinated at the beginning.

General **Gast**. Yes, sir. I, of course, cannot assure that would not occur. I understand what you are speaking of. I believe that our briefings and understanding and working with the CINCs—and I have talked to all of them about it personally, and also demonstrated preference by the JCS that they work for the CINC—help alleviate the concern.

The CTJTF is on call to the CINC. The CT unit is under the NCA through the JCS. It can be assigned to a CINC as rapidly as need be.

I believe that the CINCs have an understanding and appreciation of what they are capable of. He would be reluctant to employ a unit not as well-prepared as this unit, because the responsibility comes back to him. We have had them come in on planning operations, and it is going to be that CINC that has to tell the JCS and the NCA whether an operation is feasible or not.

Mr. **Addabbo**. We will recess for 5 minutes in order to go vote. We will come right back.

[Brief recess.]

Mr. **Addabbo**. Mr. Robinson.

COORDINATION WITH CIA AND FBI

Mr. **Robinson**. General, we know, of course, that the CIA and the FBI are both involved in counterterrorist work as well.

What is the extent of your coordination and collaboration, prospective collaboration with either of those agencies and to what degree is it perceived that you will be functioning in-country versus out of country?

General **Gast**. We have an effective relationship with the FBI. We have symposiums together. We participate in command post exercises and field training exercises with them. They have the primary responsibility for continental U.S. acts of terrorism even to include U.S. installations, unless there is Government property at stake. We would, in other cases, consult with them. They conceivably would shift control to us on an installation if there were terrorists there.

If the FBI required our assistance in a domestic terrorist incident, they would, through the Department of Justice, the Attorney General, and the President, make a determination as to whether military forces would be employed. The President has authority under Title 10, U.S. Code, Sections 332 and 333 to direct us to support the FBI or to conduct a military operation. We can move observers early on without this executive order but only in an observer capacity.

However, once the President directs through executive order we take over, it is our operation as a military operation in coordination with the FBI.

We are constrained in the amount of data by law and executive order that we can have from the FBI on internal matters and we really are unable to have this data unless there is a developing terrorist event or during an event. We do not choose to argue whether that is good or not, it is under review and it may be revised.

With the CIA, we have the same sort of liaison, direct liaison with them through the Defense Intelligence Agency and we would rely upon them greatly for intelligence. We get it from overseas and we have good access to that. If we were to conduct a military operation overseas, we would probably rely upon them for support,

———.

We see relatively little involvement in the United States. An example might be a highjacking, if it was beyond the capability of the FBI to handle it, they were not positioned and we could be, and that determination had been made at the highest level within our government. This is a potential.

There is a possibility of it but we put it on the small side of probabilities as compared to overseas.

Mr. **Robinson**. Do I gather from what you say then that your access to information with respect to what occurs outside of a country with regard to counterterrorism is more available than information within country?

General **Gast**. Far more, yes, sir. There is very little internal. There are some disadvantages even to the FBI in that regard as you know, but we are not permitted to have this data. It would be made available to us if we were to go into a counterterrorist operation.

Mr. **Robinson**. Thank you, Mr. Chairman.

CTJTF FORCES

General **Gast**. If I may proceed to the CTJTF as a basis for the program. What we are indicating is ———, that we rely upon them a great deal for coordination and liaison with our various forces and various agencies supported by my staff. In fact, as I mentioned earlier, they spend a lot of time on the road.

If I may proceed on to the ——— forces are those that have normal military missions and support of contingencies in wartime other than counterterrorism. But within those ——— forces we have identified capabilities as a result of reviewing contingencies and various scenarios past and future. Where we require additional support, it is envisioned in almost every mission we might conduct, when one looks at a scenario one would not see our Counterterrorist Joint Task Force being able to conduct it alone. We do not believe that it is practicable for us to have such a large organization nor is it necessary. But it is necessary to have within certain other units, where their equipment is especially fine-tuned, people receive additional training, air crews or Army personnel in CT. There is funding in some cases which is identified in the budget and which we can get into later.

They are available for tasking by the CTJTF commander and in fact we would actually what we call "chop" or transfer these forces in joint training. They accomplish unit training and joint training and certainly in exercises and rehearsals. They have very high capabilities.

[**Clerk's note**.—Classified chart removed.]

On the left of chart No. 7 we give you some of the combat forces that are available, Army and Navy.

Mr. **Young**. If any of these forces you are going to be mentioning on this chart are also dedicated to the RDJTF, would you indicate that?

General **Gast**. I believe that I can. Perhaps I should take that question, but I can give you a range for the ——— are not dedicated to them. But many of them are.

This does not mean, however, that there would be a conflict. We envision if the RDJTF is put into motion that we would not be conducting this kind of operation at the same time.

Mr. **Young**. That would be possible, though, would it not?

General **Gast**. It certainly would be possible.

Mr. **Young**. It would be possible?

General **Gast**. That you would have to have a conflict and it would be a matter of priorities as anything else we do.

Mr. **Young**. Thank you.

General **Gast**. I would like to point out that in my view, in our view, that the special training that these select units get ———

does not take away from their mission capability in support of others; it probably enhances their capabilities.

Mr. YOUNG. I certainly agree with that. My concern would be the availability of forces if two balloons went up instead of one.

General GAST. Yes, sir, which is always a possibility. But this would be something JCS would have to wrestle with and advise the NCA. The size of these units vary. The number of people varies. We keep close track of them. As I indicated, we exercise them quite frequently. To give you a feel, the ———.

Mr. ADDABBO. General, when we had discussions on the Rapid Deployment Force, there seemed to be some question of general turf and command. In other words if our RDF needed a force which is in B command, that force would not move until its commander said okay.

Now, most of these units are assigned to a force. Would they be continued to be commanded by their commanders or would that command be turned over to you?

General GAST. The way that I envision it working, in fact in practice, is that once we have an appreciation for what the problem is, the CINC, CTJTF and we would begin to put together a package. As soon as we identify that package we send out a message that transfers them to CTJTF or the CINC. There would be no hesitation in my view, no turf problem. I have absolutely no reservations about the procedures or how it would occur.

Mr. ADDABBO. I can see a long discussion ensuing, the guy's head is chopped off in the meantime.

General GAST. No, these have been identified, all the component commanders.

Mr. ADDABBO. You say, General, that you believe this is the way it will work. Has a practice exercise been conducted to see if this can be coordinated and will be coordinated?

General GAST. Yes, sir, it certainly has.

Mr. DICKS. Would you yield?

Mr. ADDABBO. Yes.

WASHINGTON POST ARTICLE

Mr. DICKS. I am told this article is totally inaccurate.

General GAST. That is correct.

Mr. DICKS. No one was involved?

General GAST. No one from the Department of Defense was requested nor did they offer anything.

Mr. DICKS. How did the UPI get this story?

General GAST. I am unable to comment on that, sir. I can assure you there is no basis for the story. I do not know where they picked it up or in fact if any agency supported them, but I can assure you the Department of Defense did not. I think it is speculation. I will say that it is speculation.

Mr. DICKS. You are saying no one in the Department of Defense was involved. Is there another group like yours in CIA or somewhere else that might have been involved, or State Department? Does the State Department have a counterterrorism task force?

General GAST. No, sir, they do not. State Department does not.

Mr. **Dicks**. I would like to see that unit, by the way. That would be something. It is hard to believe that the UPI, and here is the Washington Post, would carry something that is not true.

Mr. **Addabbo**. Did you read about the Pulitzer Prize?

General **Gast**. I want to be sure, sir, I have properly framed my response. I am not stating that some other agency in the U.S. Government did not. I do not have that information. I do not wish——

DUPLICATION WITH CIA OR FBI

Mr. **Dicks**. Was there any other agency in the U.S. Government that could do this kind of thing?

General **Gast**. I presume that there is, but, you know, it depends on the context. I can assure you the Department of Defense was not involved, but I do not want to mislead you.

Mr. **Dicks**. I think it is important. We ought to know how many little groups we have.

General **Gast**. Well, I do think though this may have to do with Mr. Robinson's question. I would only comment one step further in that regard.

I would only add we do not see ourselves in competition with the CIA, that they have a totally different mission than we do. Ours is for counterterrorism. They would support and assist us, but we are not in the covert business, and their organization is not in competition with what we have.

Mr. **McDade**. Can I focus on that for a little bit?

General **Gast**. Yes, sir.

Mr. **McDade**. We had the incident in London where the British cleaned up that affair. Let us hypothesize and say that CIA discovers that something is about to happen in a tough part of the world where we have some action, I assume in a place like Pakistan, or where we had an embassy takeover. We are not talking about your operation there. Let us say it is a European country for the sake of discussion or a country where there is a friendly local government.

CIA discovers that there is an action about to take place and finds it is unable to bring the necessary resources to bear, and they call you and say we need the Marines, get them over here in a hurry, bring the troops, help us, we are going to have a problem, or it has already happened and we cannot handle it. That is where you integrate with them?

General **Gast**. Yes, sir, but the way that I would envision that occurring is that they would come direct to the DCI, DCI would come to the Secretary of Defense and to the President and relate what is about to happen or it is happening, and that is when the assessment would being as to whether military forces would be employed or not.

Mr. **McDade**. You are saying to the committee you do not intend to be covert, once the decision is made you are coming in with the flag waving?

General **Gast**. No, I did not mean that. There is a very nebulous definition. Covert operation is one in which one wishes to protect the source of the information. Clandestine ———. Clandestine does not mean we are not coming in in an undetected way, we would not wish the people to know even that a decision had been made.

We would hope that during something like this no one would even know that contemplation is being given that we might be involved, so that we could ———.

Mr. McDade. What I am trying to get at is the difference between your responsibility and the CIA's, and perhaps you could give me a hypothetical rather than me give it to you, where the CIA would call on you for your support.

General Gast. I do not believe the CIA would call upon us for support. They might for equipment, if we had some particular equipment or some particular people. I cannot speak for them and their capability or what their charter would be. ——— that I am aware of. If a counterterrorist operation had to occur it would be our job to do that. If they detected something through intelligence agencies it would be reported and the decision would be made to employ the U.S. military. We do not see ourselves working in support of them in any mode for this mission. They would be in support of us. ———. Colonel Kennedy, can you add any other information?

Colonel Kennedy. No, sir, I think that states it accurately. More likely they would support us with intelligence information than we would support them in some operation.

Mr. McDade. Thank you.

Well, you say you do not envision them ever calling upon you. I find that fuzzy. Can you clear up my confusion?

General Gast. Well, only for equipment or advice, but clearly the CIA does not have the mission.

Mr. McDade. As far as you are aware?

General Gast. I do not know they have a mission nor am I aware of a capability.

Mr. McDade. If we look at your charts, ———, that you are designed to do, you are telling me that to the best of your knowledge, at least, none of that capability is in CIA?

General Gast. To my knowledge it is not intended to be, nor is that their mission.

Mr. McDade. If I could go back to the British situation, that is your job?

General Gast. Yes. If it were here in the United States the FBI would have the mission.

Mr. McDade. The expanded role overseas, we had testimony here earlier, for example, let me give you another hypothetical situation, that as the clock ticked in the Iranian-Iraqi war the likelihood was, ———.

General Gast. No, sir, that is not. Certainly there is American interest there.

Mr. McDade. Yes, as you stated it first———

General Gast. The situation you describe would be the responsibility of the host country. Whether our government would share information with them I would not comment. If the host country asked, you know, for example, needed support———

Mr. McDade. I am looking at your mission on the second page, U.S. interests, citizens, property, when directed, either unilaterally. ———

General Gast. Yes, sir.

Mr. McDADE. Suppose you received an intelligence estimate they were going to do what ——— or some other place, what is your relationship to that kind of a situation?

General GAST. Well, that is a difficult scenario. In this instance, the host country would be responsible to take protective measures. We would not force ourselves upon them nor would we go into an operation of that nature.

Mr. DICKS. Would you yield?

Mr. McDADE. Let us take the U.S. embassy ———.

General GAST. Yes, sir.

Mr. McDADE. There is no host country problem there, you are going to go in there if you have to?

General GAST. If a U.S. embassy were threatened and the ambassador and our government decided there was some additional support required, as we have in the past, we would support the State Department by ———. The State Department would provide additional people for security and the Marines might be increased for additional security. I think that the Government would have to make a decision as to whether it is going to reduce personnel at the embassy significantly or not and what additional support they wished. ———.

Mr. McDADE. You find it inconceivable they would ask you to come in?

General GAST. Ahead of time.

Mr. McDADE. You would be asked to come in, with ———.

General GAST. I do not find it inconceivable if the ——— Government asked us to do that.

Mr. McDADE. Well, that is what I am trying to get to. Your statement says that you can act either unilaterally or in support.

General GAST. When directed by NCA.

Mr. McDADE. Yes. I am trying to give you the hypothetical situation of the ——— to engage in a terrorist activity to strike at the vitals of U.S. interests and Free World interests.

General GAST. Yes, sir.

Mr. McDADE. And CIA says we do not have the kind of capability we need, call you. You do not seem to see that as a possibility because of host-country problems.

General GAST. If you are referring to friendly countries and I am not trying to be difficult about this, I see it as a possibility. Anything is possible. I do not mean to imply it is not. What I am trying to indicate is that if what you describe were to occur and there was an actual threat, the country, particularly ——— in this case, would be required to protect the U.S. interests there. If they requested our support, that would be something else for the NCA to decide.

Mr. McDADE. Do you have to be invited in or can you go in?

General GAST. We have to be invited into another friendly country.

Mr. McDADE. By the host country?

General GAST. Yes, sir.

Mr. YOUNG. Would you yield?

In the case of Iran, the forces we sent there certainly were not invited.

General GAST. No.

Mr. **Young**. In a case like that———

General **Gast**. That was a hostile host government.

Mr. **Young**. Then your answer would be different.

General **Gast**. It would be different in that case.

[Recess.]

SECRECY OF OPERATION

Mr. **Addabbo**. General, earlier in the hearing, Chairman Whitten raised the question of the classification of this operation. After the publicity that ——— received following the aborted hostage rescue mission did not most people in government become aware of a military counterterrorist force? If that is the case, why the need for this heavy classification?

General **Gast**. Well, yes, sir, I think it is definite that the American people are aware that we have a capability. There has been a great deal of speculation that it was ——— or various other titles. Our desire to retain high classification is to not confirm that any particular unit would be involved. Our great concern is not only identification of our personnel but ———. We believe that for a successful operation, the essential element is surprise, no one knows that we are coming until we are there.

ORGANIZATION

Mr. **Addabbo**. Who actually commands the ———?

General **Gast**. ———.

Mr. **Addabbo**. Is your training centralized or is the training done at various points?

General **Gast**. It is done at various points. We have identified what we want the units to be able to do in unit training, and frequency that they must do it, and the capabilities they must achieve. We have identified the joint training requirements and frequency as well as for combined exercises. A lot of it is done at installations, when we bring them together in a joint mode. We exercise and train to do that under various scenarios both where we can cover as well as where we want to introduce them to ——— all kinds of environment. We plan to train where we can ———.

Mr. **Addabbo**. How many people, bodies, from the Joint Chiefs of Staff are involved in this program? Their sole obligation is this program.

General **Gast**. With the sole obligation there are three on my staff, which Colonel Kvederas heads. Within the Services there are several people, and each one of the gentlemen to my rear are from their Services and are one of them. We have worked to constrict within the JCS and the Services, knowledge of the program and knowledge of the operations, to insure that things are properly staffed. We believe that we have struck a reasonable balance. The Joint Chiefs of Staff and their Operations Deputies are briefed quite frequently on the progress that has been made in terms of forming the unit, its capabilities, its potential, where it is going, and are often briefed on exercise scenarios. It is a very closely followed program by the Joint Chiefs of Staff and it has very high visibility.

Mr. **Addabbo**. The RDJTF went through growing pains and quite a few problems with its command structure. What organizational management actions have been taken to possibly alleviate some of the problems that we saw with the Rapid Deployment Force?

General **Gast**. To my knowledge, sir, there have been no significant growing pains. This is a small unit, perhaps that is one of the reasons. They have been provided the resources. It has very high priority, not that RDJTF has not. It is very manageable. RDJTF is a larger unit and there are a lot more resources required and a whole host of reasons for time required for management.

The commander of the CTJTF reports to me administratively. We have a staff, and have full Service participation. To my knowledge, there has not been any significant doctrinal turf issue surface. There have been one or two as to should one Service provide a scarce resource or should another Service. I stay in touch with the operations deputies, keep them informed and receive JCS guidance. As I indicated earlier, they have full visibility on the program and I think we have excellent support.

CTJTF COMMUNICATIONS

Mr. **Addabbo**. It appeared when we were briefed on last year's Iranian hostage rescue attempt, you almost got a feeling of the maze of communications that had to go back and forth and crisscross before you got anything that could be done on the question of aborting the effort. Has CTJTF learned from that? Will the communication lines be more direct without having to go through that kind of maze?

General **Gast**. Obviously we have. I believe it is a fair statement to say we learned a lot there. There are many people ——— involved. The lessons are reviewed, not only that but other exercises we have conducted, and we evaluate to understand what other countries have done ———. We have far better communications than we had then. The success of any operation, however, is to have trained and practiced all of the elements in rehearsals. We have spent an awful lot of effort within the Joint Staff and the Services in looking into command and control. ———. We felt these people needed to be dedicated to CT alone to insure good communications.

Mr. **Addabbo**. Has CTJTF trained with any foreign counterterrorist forces?

General **Gast**. ———.

Mr. **Addabbo**. Would someone within CTJTF have entire responsibility for liaison or would you have to go through the ambassador's office?

General **Gast**. We always go through the ambassador's office. We are of the firm belief that the ambassador must be knowledgeable about anything that goes on in the country. Of course, I might add that there are certain levels of approval that are required if we are going to become involved in training, or anything of that nature, they quite often require heavy high-level government approval as a matter of policy and work through the State Department before we are permitted to.

[Clerk's note.—Classified chart removed.]

The next chart, if I may, gentlemen, gives you an indicator of response capabilities. It indicates to you the capability to begin movement of forces from a standing start. I do not wish in any way to indicate to you that we would rapidly conduct a mission in a coordinated and professional manner without intelligence, but it does indicate that within hours we can get under way, ———.

The chart does not include the detailed planning that may be necessary and rehearsals. It is my view that planning would be required and could be undertaken while we are en route, and there is always a need to rehearse. We work hard to rehearse or exercise in regions and notional kinds of things that we might have to do.

[Clerk's note.—Classified discussion removed.]

Mr. Addabbo. Is the cost of modifying these ——— included in the CTJTF cost?

General Gast. No, sir.

Commander Sandoz. Under the category of other CT-related—it is not included there.

General Gast. Yes, sir.

Mr. Addabbo. Off the record.

[Discussion off the record.]

COST OF RESCUE ATTEMPT OF AMERICAN HOSTAGES

Mr. Addabbo. Do you have the entire cost of the attempted rescue of our hostages in Iran?

Commander Sandoz. Yes, sir, the Iranian attempt was approximately $193 million total cost. ———

Mr. Addabbo. Is the cost of modification of the aircraft included in that?

Commander Sandoz. Yes, sir, it is.

Mr. Dicks. Could I ask a question on that?

We had some prototype planes built, was it a YC-14 and 15?

General Gast. Yes, sir.

Mr. Dicks. Were they looked at in this regard?

General Gast. No, sir, they were not. You mean as a further capability in the future?

Mr. Dicks. Well, as a capability for that particular mission. I am curious.

General Gast. They were not. Only two existed at that time and they were in R&D, too risky to try to put together a package and support package to sustain that. They were not flying much at the time.

[Clerk's note.—Classified chart removed.]

If I may move to the next chart, gentlemen. This is a relationship chart.

CTJTF COMMUNICATIONS

General Gast. This chart that indicates the communications and liaison. What this is intended to indicate to you is the liaison we have with these various units. I need not speak to the military services, that is what these gentlemen are here about, nor the Department of State. I am a member as well as Mr. Koch from OSD on the interdepartmental group to develop policy recommendations. We have already discussed the kind of support that we would expect from the CIA and mutual support. The Defense Nuclear Agency and we have common concern ———.

[Clerk's note.—Classified discussion removed.]

NUCLEAR WEAPONS

Mr. Dicks. I would like to ask a question on that. It seems to me when you look at a capability you start talking about dismantling or handling nuclear devices, I would like to hear a little more about that. That seems to me to be a real possibility at some point in the future. What kind of experience and background do those people have with nuclear weapons?

General Gast. Yes, they do. They have training. If they were to go into an operation of that nature, we would have someone from the Department of Energy or from one of our own service members, a specialist right along beside them advising them and working with them.

Mr. Dicks. Do you know who that person is?

General Gast. I do not know.

Commander Sandoz. Yes, sir.

Mr. Dicks. I would assume that as part of this you would have those people identified.

General Gast. They are identified specifically not only for this but for handling accidents. Each Service has special teams to handle the nuclear weapon accidents or something of this nature.

Mr. Dicks. So if it is a naval situation you have a Navy team?

General Gast. Yes, sir.

Mr. Dicks. You said each of the services have these people. Who else did you say had the people, Department of Energy?

General Gast. It could be Department of Energy or Defense Nuclear Agency, DNA. They each have team specialists who go on a broad range of things, accident or airplane crash or something of this nature.

Mr. Dicks. And they are prepared. Is there an agreement with them in case of an incident like this they will go and do this?

General Gast. That is right.

Mr. Dicks. They are not in the military?

General Gast. They are.

Mr. Dicks. They are in the military?

General Gast. Yes, sir.

Mr. Dicks. They are military people who work for the Department of Energy, who specialize?

General Gast. Yes, sir.

Mr. Dicks. Explain that.

Commander Sandoz. I could respond to that. What we are talking about are specialized specialist trained military personnel who are members of our explosive ordnance disposal teams. Army, Navy, and Air Force each have EOD personnel. They are all trained by the Navy ———. They get special training in not only the nuclear weapons in the U.S. inventory and the basics of nuclear weapons, but they also get training in improvised weapons, nonnuclear and nuclear. They would be called in to support an agency right now in terms of looking for improvised explosive devices, et cetera. They could be called in on a nuclear terrorist incident in coordination with the Department of Energy, which is a nuclear emergency search team that we spoke of earlier, to actually handle a nuclear accident or a threat.

Mr. DICKS. But the necessary people are military?

Commander SANDOZ. No, sir, they are Department of Energy.

Mr. DICKS. But this is their responsibility, so in the context of an international terrorist activity, they are prepared to go and work on this problem?

Commander SANDOZ. They are prepared to go to the site and survey it for the presence of nuclear material. They are also highly knowledgeable in all forms of nuclear energy. The military explosive ordnance disposal people are most familiar with our nuclear weapons in the United States inventory and they are ready to respond to any type of an accident or threat involving U.S. nuclear weapons.

Mr. DICKS. Well, for example, when Titan——

Commander SANDOZ. That would be an Air Force EOD response.

Mr. DICKS. Thank you, Mr. Chairman.

Mr. ADDABBO. General.

General GAST. Thank you, sir.

Moving on to the FBI, I believe that I have described our relationship there. On up to block DA/DOMS, that is Department of Army and Director of Military Support. Here is a relationship that has to do with the continental United States or the United States territory in that by our plans and executive order, that if the military is to support the FBI or some other agency in antiterrorist operations, the Secretary of the Army's job, he has the DOMS unit with which you are familiar. The Secretary of Defense in support of that would transfer CT units which would work for the Army based on Presidential decision. They would work for the Secretary of the Army and DOMS in the continental United States.

For JCS, I have the primary staff responsibility.

[CLERK'S NOTE.—Classified chart removed.]

In the funding chart, next if I may go to that. Mr. McDade, I am not sure that we at all satisfied your interest in this and perhaps I can attempt once more to explain what I was trying to say.

When we spoke "unilaterally," we were talking about once the NCA makes the decision it is either unilateral force, decision that the CTJTF operate unilaterally and not under a CINC. We would always wish to work in support of a friendly government if they asked us for our support. The difference I think between Tehran or any other government that is unfriendly and uncooperative, our interests are clearly at stake. We would obviously be dispatched if the NCA made that decision.

Mr. McDADE. Thank you very much.

CTJTF FUNDING

General GAST. Going to the funding, we can get into that in the detail you would like. Generally, the funds for the headquarters are funded by the Department of Army, they are indicated in the various budget elements. For the administrative support, the Services provide funding for their components, but there is a Service sharing of funding for the joint communications unit that I spoke of earlier, and for joint training.

Mr. **Robinson**. Mr. Chairman, I understand that there has been some special communications equipment developed or is under development ———.

General **Gast**. That is right.

Mr. **Robinson**. Is that reimbursed ———?

General **Gast**. If they do anything for us we reimburse them. Our communications, new equipment under development is not only ———. Does anyone have any more details?

Commander **Sandoz**. ———.

Mr. **Robinson**. Thank you, Mr. Chairman.

[Brief recess.]

Mr. **Addabbo**. General Gast?

General **Gast**. Thank you.

Under funding, I would add another line that is not there, before we go to the funding during actual contingencies.

The budget requests do not include contingency operations. They include the funds, based on our best planning factors, that are required to equip man and train the units, as well as for exercises.

Contingency costs are beyond the scope of what we have budgeted. We do not believe there should be slush fund for that. It is not manageable. It is not needed.

If an operation had to quickly get underway which would require additional funds over and above the President's budget as amended, we of course would be required to come back to the various committees for reprogramming action. We are very much sensitive to the need to do that and, of course, to gain the concurrence of Congress before any reprogramming of funds.

Mr. **Addabbo**. General, you say contingencies. On that page we see funding during actual contingencies—CTJTF spends its allocated funds as required to meet contingencies.

General **Gast**. Yes, sir, that is what I meant to imply. If an operation actually came up, and we did not have the opportunity to reprogram, as we went through it, we would go ahead and use available funds, then come to Congress for reprogramming.

[**Clerk's note**.—Classified chart record.]

We are prepared to go into the detail that you would like under the funding. This funding here generally recovers for 1980 and 1981 budget, as well as a request. It is broken down here for you by Army, Navy and Air Force. It includes not only the support in all cases of the ——— and perhaps if you have questions on that, on succeeding pages—you will note that the 1982 budget is less than the 1981. That is simply because the start-up and the purchasing of equipment would be somewhat less.

It is based upon our best planning factors. It requires a hard scrub, not only by my people, Commander Sandoz, but also the people involved in the Services because they foot the bill. We think that we have good procedures now. We wish to be totally cooperative with all the committees on it. Rather than for me to explain each one of these, perhaps there may be some questions that any of you would have, that we would respond to.

Mr. **Addabbo**. General, you alluded earlier to the reprogramming which we approved the money for ———?

General **Gast**. They have.

Colonel **Nightingale**. Yes, sir. ———.

[Clerk's note.—Classified discussion removed.]

CREDIBILITY

Mr. Young. Let me just—not a question, but rather a statement. I am sure that we have all noticed a change in the attitude in the country, in the Congress, the Administration, relative to matters of intelligence and national security. One of the reasons is that we have done certain things in Congress, that is, we have created a Committee on Intelligence.

Our colleagues know that, and they also know this committee has access to information that most of them don't have. The reason that we are not coming under the same political pressures that we did, say, eight or nine years ago, is because they have confidence in this committee and confidence in the Intelligence Committee.

But if your side of the table gets back to the old habit of covering up everything under the guise of an imminent crisis, then we lose our credibility. You know, our colleagues are pretty tough on us. When they saw us on the Floor—after the Israeli raid, "Hey, did you guys know about this? If you didn't, why didn't you? That is what we gave you the job for."

That is a little embarrassing to us. If our credibility doesn't remain high, then we go back to the old system where you are subject to all the politicians, and I for one don't want to see that happen. I don't believe we can provide a secure nation doing it that way.

I am perfectly willing to accept your word on this issue and any other one that might be similar to it. But you need to understand that our credibility has got to be protected and you have to work with us because we have 435 colleagues up there, many of whom are looking for a soft spot in this new definition of national security.

General Gast. I totally understand that. I will relate your concerns.

I do not know whether the Intelligence Select Committees know ———.

How the feedback can be, and that credibility, is something I will ask OSD to consider, but I totally understand.

Mr. Young. Thank you, Mr. Chairman.

Mr. Addabbo. Sometimes you can find out by reading the newspapers.

Mr. Young. That is something else.

General Gast. You think you find out, but the problem is when there is one quarter fact in there and three-fourths not fact.

FUNDING

Mr. Addabbo. General, the funding that we see in your charts, when we go over the budget and appropriation process, will these be included in the overall funding requests or are there line items?

General Gast. Commander Sandoz?

Commander Sandoz. Mr. Chairman, that varies by Service. I think the best thing is to have each of the Services respond on their method of doing that.

Colonel **Nightingale**. In the case of the Army, for example, in fiscal year 1981, the committee has reviewed a ———. They come from several different sources within the Army.

Commander **Quincannon**. Mr. Chairman, within the Navy, the funding for ———. That is the line item for that, for the Navy.

Colonel **Gadd**. Essentially the same way for the Air Force, Mr. Chairman. In the Air Force we have it as a ———, and that is how it has been entered for both the fiscal year 1981 Supplemental and the 1982 Amendment.

In addition, the remaining funding for the Air Force component will come through a line item under Force Program Two, which basically includes additional flying time to support the annual joint training programs.

Commander **Sandoz**. It might be helpful, Mr. Chairman, to point out the funding of all these other forces that could conceivably be involved in the support of the Counterterrorist Joint Task Force is for the most part in normal Service budgets. In other words, if an aircraft carrier is required to support some operation or training, there is no reimbursement for that, there is no separate line or funding of that. It just comes out of the normal Service program. ———.

Mr. **Robinson**. Mr. Chairman?

Mr. **Addabbo**. Mr. Robinson.

Mr. **Robinson**. Both Army and Navy have some MILCON money in there. What is that for?

Colonel **Nightingale**. The Army MILCON, sir—in the fiscal year 1981 column, the ———.

Commander **Quincannon**. For the Navy, sir, the ———.

Mr. **Addabbo**. Why would you need new construction for a headquarters? The gentleman from Virginia has Vint Hill Farm that the Army wants to close. There is so much room right here in Virginia, within view of the Pentagon. I imagine there are other places. This is not this committee's purview, but several of us sit on MILCON. Where is it going to be constructed and why would we have to construct a new headquarters?

General **Gast**. It is constructed at ———.

[**Clerk's note**.—Classified chart removed.]

Mr. **Addabbo**. On the general question, the ———. Would you, under your charter, have the same right to give arms or other assistance?

General **Gast**. To the CIA, for example?

Mr. **Addabbo**. To other counterterrorist forces.

General **Gast**. Military units, yes, sir. We would support that. But we would be reimbursed. I would not want to indicate that if we had a particular capability that was required by the FBI, and they had a need, a demonstrated need, we would not share that technology.

Mr. **Addabbo**. I am talking now about foreign counterparts.

General **Gast**. No, we would not.

Mr. **Addabbo**. That is not within your charter?

General **Gast**. That is correct. All of that, even those other units, would have to be handled under a policy agreement at the highest level.

Mr. **Addabbo**. General, there are many questions staff has prepared. We would ask for your full and complete answers for the record. Again, after you have gone through the entire record, if it is possible to have a cohesive, unclassified record for general use, we would appreciate it.

General **Gast**. Yes, sir, I understand.

Mr. **Addabbo**. Please answer the following questions for the record.

[Clerk's note.—Questions submitted by Mr. Addabbo and the answers thereto follow:]

CLASSIFICATION

Question. The existence of the CTJTF as well as its mission, organization, personnel composition, funding, etc. has been accorded special access classification. Additionally, requested funding for the CTJTF has been under terse line items, such as ——— with no supportive justification material.

Why is the existence of this organization so highly classified?

Answer. The existence of a counterterrorist organization is not classified, in fact, it has been publicly announced. The identity of units and personnel, tactics, locations, weapons and equipment remain classified to limit knowledge of the CTJTF capabilities and protect against hostile countermeasures.

ORGANIZATION

Question. If a terrorist incident involving Americans, either as victims or perpetrators, occurred in a country with a capable counterterrorist force, would CTJTF personnel be deployed as advisors or would CTJTF be involved in a joint operation with its foreign counterpart?

Answer. ———.

JURISDICTION

Question. The Attorney General and the Director of the FBI have been quoted on numerous occasions as stating the U.S. is a major target of international terrorist groups, and the immunity the continental U.S. has enjoyed from major terrorist acts to date cannot be expected to continue.

What is the responsibility of the CTJTF with regard to acts committed within the U.S. by international terrorist groups?

Answer. The responsibility for management of the Federal response to most acts of terrorism in the United States rests with the Attorney General. Within the Department of Justice the FBI is the lead agency. The initial tactical response to a terrorist incident of duration would be made by the FBI Special-Agent-In-Charge at the scene, under the supervision of the Director of the FBI, who is also responsible for the on-going operations to contain and resolve the incident. If resolution of the incident was beyond the capability of non-military federal resources, the President might, at his option, under the provisions of 10 USC 332 and 333(2), direct a federal military response employing counterterrorist forces. A proclamation under 10 USC 334 would be necessary. The President's decision would be communicated to the Department of Defense as an Executive Order.

Question. The FBI and state and local police agencies have primary jurisdiction depending on the target of a terrorist attack. What plans, policies, and procedures have been developed to adequately provide for jurisdictional issues which could arise if the CTJTF becomes involved in a terrorist incident?

Answer. The FBI is the lead agency in resolving domestic incidents. FBI coordination with state and local law enforcement agencies would normally occur prior to involvement of military CT forces ———.

Question. In such a scenario, how do you resolve who is in charge of the operation?

Answer. The Departments of Defense and Justice agree that once a federal military force is committed by Executive Order, arrives at the scene of the incident, and is prepared and authorized to undertake a tactical mission, control of the tactical situation will transfer from civil authority to the military commander as directed by the President. As soon as possible, command and control at the scene of the incident will be returned to the civil authorities for appropriate investigative and other law enforcement functions.

Question. Do you anticipate constitutional and legal problems to the use of regular military forces within the U.S.?

Answer. No.

Question. Please describe for us the CTJTF responsibility and involvement in the hypothetical situation of a seizure of a foreign diplomatic establishment, a U.S. government facility, or a private sector facility by a terrorist group.

Answer. Military involvement in domestic incidents would ———.

Question. Although the continental U.S. has been spared from major international terrorist incidents, such as the seizure of the Iranian Embassy in London, or the massacre of the Israeli Olympians at Munich, it has not been immune from incidents fomented by domestic terrorists.

What responsibility and jurisdiction would the CTJTF have in a domestic terrorist incident such as that perpetrated by the American Indian Movement (AIM) several years ago at Wounded Knee, South Dakota?

Answer. In such a situation, as in any situation where there is authority for federal law enforcement actions to control or terminate a domestic terrorist incident and such action is beyond the capabilities of non-military federal resources, the President may, as stated above, direct a federal military response. If that judgment were made, the CTJTF could be used to resolve the incident if deemed appropriate.

Question. Would you outline for the Committee the scenarios in which CTJTF forces would be utilized?

Answer. When an act of terrorism is directed against US interests, citizens, and/or property, the National Command Authorities may decide to use military force. Possible circumstances and missions could include. ———.

Question. How many contingency plans for CTJTF deployment have been completed? How many have been approved?

Answer. ———.

Question. Can these contingency plans be placed in operation without further validation or approval? If no, how is the operation approved and by whom?

Answer. In a crisis situation involving terrorist activity, the designated commander would develop an operations plan within the framework of the approved concept plan. Execution of any military operations plan requires approval and direction by the National Command Authorities.

Question. The Holloway Board recommended the establishment of an independent and impartial senior review group to review and approve plans prior to the deployment of counterterrorist forces. Has such a senicr review group been established to review CTJTF plans. If yes, who serves on this group?

Answer. A Special Operations Advisory Panel has been established for the purpose of providing an independent assessment ———.

Question. If a review group exists, how does its review and validation of CTJTF plans affect the timeliness of CTJTF reaction?

Answer. ———.

Question. Has the review group reviewed and validated CTJTF plans drawn up to date, or will these be reviewed and validated prior to deployment?

Answer. ———.

LOGISTIC SUPPORT

Question. Where does CTJTF now have stocks of equipment throughout the world to logistically support potential future operations, and is the cost of guarding and maintaining this equipment part of the CTJTF budget?

Answer. ———.

Question. What plans do you have in being to draw upon the Navy to provide sealift or seaborne bases of operation to CTJTF in any potential future contingency? If so, are certain numbers and types of ships identified for such support in order that they might be readily available and in place when needed in an emergency?

Answer. ———.

Question. Can you visualize scenarios where it might be necessary to draw upon the Rapid Deployment Force for support or augmentation? If so, are there provisions for such support or augmentation currently in your contingency plans?

Answer. ———.

Question. What arrangements do you have in being within the Strategic Air Command to provide refueling support to the CTJTF if and when needed?

Answer. ———.

INTELLIGENCE SUPPORT

Question. It appears that the CTJTF is to be essentially a rapid deployment force to counterterrorism. Similar to the Rapid Deployment Joint Task Force (RDJTF) it will require significant intelligence support prior to, and during deployments.

Has provision for the required intelligence support been adequately integrated into current planning for the CTJTF? What organization within CTJTF is responsible for coordinating CTJTF intelligence needs with the intelligence community?

Answer. ———.

Question. What entity within the intelligence community is serving as the focal point for intelligence support to the CTJTF? If none, why?

Answer. ———.

Question. Is a separate data base of known or suspected terrorist groups, their training, movement, intentions, etc., required?

Answer. ———.

Question. Have policies and procedures been developed for the CTJTF to secure tasking of intelligence sensors to satisfy CTJTF intelligence requirements?

Answer. ———.

Question. How much of the funding requested for the CTJTF in fiscal years 1981 and 1982 are for intelligence support activities?

Answer. ———.

Question. The former Chief of Israeli military intelligence was quoted as stating that terrorists receive training at over 40 establishments in the U.S.S.R., with additional training camps located in the Eastern European satellite countries, Cuba, and the Middle East. Recruits from the Arab world, Africa, Latin America, Western Europe and Asia receive instructions on guerrilla warfare, sabotage, street fighting, undercover operations, and assassination. Will the CTJTF require surveillance of these training establishments by the intelligence community on a regular basis?

Answer. ———.

Question. Will assessments be made of particular terrorist groups' intentions, targets, and schedule for initating actions?

Answer. ———.

Question. The CTJTF could be required to deploy anywhere in the world. What provisions have been made for adequate linguistic support?

Answer. ———.

[CLERK'S NOTE.—Seven classified questions and answers removed.]

FUNDING

Question. Do the services provide their share to the CTJTF in a timely fashion, or have you experienced problems in this regard?

Answer. Service funding of the CTJTF has been accomplished in a timely fashion with no significant problems.

Question. If you have experienced funding problems for the CTJTF, would it be more efficient to fund the force at the OSD level?

Answer. There have been no significant funding problems for the CTJTF.

Question. If the CTJTF needs to purchase or lease ———. How is this accomplished?

Answer. The Service which is executive agent for the particular type ——— required would validate the requirement and then procure the asset for the CTJTF.

Question. If a contingency requires ——— and there are insufficient funds budgeted by the CTJTF to cover the purchase or lease, how do you obtain the funds to accomplish this?

Answer. Such an action would require reprogramming of Service funds to cover the requirement. Recovery of money by the Service would require submission of a supplemental budget request to Congress.

Question. Have there been any funding problems in obtaining required equipment and support ———?

Answer. No.

[CLERK'S NOTE.—End of questions submitted by Mr. Addabbo.]

Mr. ADDABBO. Mr. Robinson?

Mr. ROBINSON. No further questions.

Mr. ADDABBO. Mr. Young?

Mr. YOUNG. Thank you, Mr. Chairman.

Just briefly, does the CTJTF have its own intelligence operation?

General GAST. It does, yes, sir. ———.

Mr. YOUNG. You would be on the distribution list automatically ———.

General GAST. Yes, sir. Anything to do with terrorist intelligence information comes directly to the unit, they screen it, and come up with procedures, and attempt to be able to try to predict. But we have full cooperation in that regard.

Mr. YOUNG. As the intelligence develops and situations look like they could possibly be troublesome, do you make this part of your training? Do you prepare contingencies and run drills and exercises?

General GAST. Yes, sir, we do.

Mr. YOUNG. You are current at all times, as much as you can be?

General GAST. Yes, sir. Of course, not only do they work under my staff, but also the National Military Command Center is part of my organization. Anything that comes in that looks like it may be developing, I am usually on the phone with the commander and saying, "Do you have this, and are you working on it?" They begin to look at it only from a contingency planning point of view.

Mr. YOUNG. So if the President calls——

General GAST. Hopefully we would be ahead of his call, yes, sir.

Mr. YOUNG. Good. That is what I wanted to determine.

Thank you very much.

Thank you, Mr. Chairman.

Mr. ADDABBO. Thank you very much, General, gentlemen. It has been a very informative morning.

The committee will stand in recess until 1:30, at which time the hearing will be open.

JOINT FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF ENERGY AND DEPARTMENT OF DEFENSE AGREEMENT FOR RESPONSE TO IMPROVISED NUCLEAR DEVICE INCIDENTS

I. PURPOSE AND SCOPE. To set forth and define specific areas of responsibility and procedures for responding to emergencies involving improvised nuclear devices (IND) within the United States, District of Columbia, Commonwealth of Puerto Rico, and U.S. possessions and territories, by representatives of the Federal Bureau of Investigation (FBI), Department of Energy (DOE), and the Department of Defense (DoD). These provisions amplify the current DoD/DOE Agreement of 1 March 1977, DOE/FBI Memorandum of Understanding of June 1976 dealing with response to accidents or incidents involving nuclear material, and the Attorney General's letter to the Secretary of Defense on assistance to Federal agencies in combatting terrorism, dated November 10, 1972.

II. TERMS OF AGREEMENT.

a. This agreement shall be effective upon signature by representatives of the Federal Bureau of Investigation, the Department of Energy, and the Department of Defense.

b. Amendments, modifications, or termination of this agreement may be made by written agreement of all parties.

III. POLICY. In the event of a Nuclear Threat Incident involving an Improvised Nuclear Device (IND), the Federal Bureau of Investigation is responsible, as set forth in Section 221.b. of the Atomic Energy Act, as amended, for investigating all alleged or suspected criminal violations of that Act. The FBI has primary jurisdiction where a question of the violation of Federal law exists and, where appropriate, will coordinate the utilization of available resources in the interest of public health and safety.

The Department of Energy and the Department of Defense will provide assistance and support to the FBI as listed in Section V of this agreement.

IV. IMPLEMENTATION. Each party will issue its own departmental instructions and detailed operating procedures implementing this agreement and will develop and exchange additional instructions and procedures as are deemed necessary to the continued implementation of this agreement.

V. RESPONSIBILITIES.

a. The Federal Bureau of Investigation will:

1. Act as the Federal agency in charge at the scene of an IND incident and assume jurisdiction over all field organizations.

2. Establish and maintain contacts and coordinate IND incident support requirements with other Federal and local law enforcement agencies.

3. Provide security for personnel and equipment to be utilized in search, deactivation, and cleanup operations.

4. Provide, at the incident scene, a representative to act as liaison with Federal and local authorities.

5. Notify appropriate individuals and offices of any nuclear threat incident.

6. Notify DOE Headquarters of support requirements and provide:

(a) The exact wording of threat messages, copies of drawings, nuclear material samples, or other related intelligence for scientific analysis and credibility assessment.

(b) All information pertinent to an assessment of a threat perpetrator's technical capabilities to carry out a threat.

7. Notify the National Military Command Center (NMCC)/Emergency Ordnance Disposal (EOD) of support requirements for either standby or deployment.

8. Provide additional support as required by DOE and DoD/EOD personnel in carrying out assigned operations.

b. The Department of Energy, upon notification by the FBI of an IND incident, will:

1. Provide scientific and technical assistance and advice to the FBI and DoD in the areas of threat assessment and search operations, device deactivation, hazards assessment, containment, relocation and storage of special nuclear material evidence, and in post-incident cleanup.

2. Analyze threat messages for technical content, nuclear design feasibility, and general credibility and provide such analyses to the FBI.

3. Acquire, maintain, and make available any special equipment and capabilities required to provide the necessary scientific and technical support.

4. Coordinate IND incident activities with the Nuclear Regulatory Commission (NRC), as appropriate. (IND incidents involving facilities or material within the jurisdiction of the NRC are initially reported by NRC to the FBI.)

5. Arrange for any special transportation of DOE equipment, personnel, and/or nuclear material, as required.

6. Notify the DoD and civilian agencies of, and request assistance for, post-incident cleanup activities as soon as appropriate.

7. Have final authority concerning the classification of Restricted Data and DOE-originated National Security Information associated with source material, special nuclear material, radioactive by-products, or nuclear weapons/components.

8. Provide, upon request by the FBI, scientific and technical information and testimony for use in any legal action undertaken by the Department of Justice.

c. The Department of Defense, upon request by the FBI, will:

1. Provide EOD technical and operational assistance to the FBI.

2. Provide EOD technology, procedures and equipment for working point access, device deactivation, and nonnuclear device diagnostics.

d. The FBI, DOE, and DoD will:

1. Coordinate all proposed press releases related to IND incidents. Any media or public inquiries will be initially referred to the FBI; responses to such inquiries will be coordinated with DOE and DoD.

2. Treat all IND incident information with adequate security and confidentiality commensurate with National Security classification guidelines and the standards for the preservation of criminal evidence.

3. Review the IND incident for the purpose of improving upon future joint responses.

4. Provide a mechanism for coordinated planning and for coordinated training and testing of IND incident management, equipment, and personnel.

e. The DOE and DoD, in support of the FBI, will:

1. Develop working point operating procedures to be followed after location of an IND.

2. Provide for:

(a) IND EOD training material including inert nuclear and high-explosive devices and fuzing and firing systems.

(b) Realistic training exercises that include participation by all parties (FBI, DOE, and DoD/EOD).

(c) Training in EOD practices, procedures, and component identification safety precautions for IND.

(d) Research and development in the areas of render safe and disposal technology including radiation dispersal containment concepts.

VI. PROCEDURES.

a. Initial Notification

1. IND incidents could initially come to the attention of the FBI, DOE or the DoD. Upon receipt of such information, the agency informed shall immediately notify the nearest FBI office and provide all known information. The FBI will officially notify all agencies involved of the incident.

2. All agencies shall notify the various branches, offices, or individuals concerned within their jurisdictions about the situation and specify what actions and/or resources might be required.

b. Initial Preparations

1. The FBI will designate a Special Agent to take command of field operations and Special Agents to act as liaison with DOE Headquarters, local police jurisdictions, and the National Military Command Center.

2. DOE will consult with the FBI and will assign personnel to provide required support. An FBI liaison representative will be designated by competent authority to accompany DOE personnel to the scene of an IND incident for local coordination purposes.

3. The NMCC will, upon the receipt of notification by the FBI of a credible IND incident, notify the applicable DoD Operations Center which will utilize its established notification system in order to dispatch an EOD unit and other technical and operational support to the incident site. An FBI representative will be designated by competent authority as point

of contact for EOD personnel at the scene of an IND incident for local coordination purposes.

4. The DoD/EOD command post will be colocated in the incident site control center.

c. Threat Assessment

1. The FBI with DOE assistance, including DoD participation when appropriate, will provide a threat assessment.

2. DOE will provide scientific and technical assistance for determining the credibility of specific nuclear threats and the potential hazards associated with those threats and report its assessments to the FBI.

3. DOE will determine, in coordination with the NRC, if any source material, special nuclear material, or radioactive by-products are missing or unaccounted for and report results to the FBI. DoD and DOE will, when requested by the FBI, determine if any nuclear weapons or components are missing.

4. The FBI will notify DoD through the NMCC of any credible threat and request DOE and DoD/EOD assistance.

d. Search and Location

1. DOE will have primary responsibility for the search and location of IND's.

2. DOE will dispatch, upon request of the FBI, a DOE response group and necessary special equipment to the scene of an incident.

3. The DOE response group will, by use of specialized equipment, attempt to determine the presence and location of an IND.

4. DOE will relay all data relating to the IND including radiological readings, configurations, and location to the FBI and the DoD/EOD team.

5. DoD/EOD personnel will identify the presence or suspected presence of booby-trapped devices in the area or structure in which the DOE response group is searching.

6. The DoD/EOD team present will be responsible for the clearance of any booby-traps or other hazardous items encountered by the DOE team during the search.

7. The FBI will have primary responsibility for security of, and access to, the location of an IND incident.

e. Incident Site Reconnaissance and Clearance

1. DoD/EOD, with DOE technical assistance, will have primary responsibility for incident site reconnaissance and clearance.

2. DoD/EOD personnel will clear the area/structure of explosive devices.

3. DoD will provide a qualified individual for safety and coordination of functions at the working point.

f. Diagnostics and Measurements

1. DOE, with DoD/EOD assistance, will have primary responsibility for diagnostics and measurements.

2. DOE personnel will determine, through use of diagnostic and measurement equipment, details of the suspected device, including its structure and function.

3. Data relative to the anticipated structure and function of the device will be provided by DOE to the FBI and DoD/EOD personnel.

4. Provide a hazard assessment to the DoD and FBI as related to the incident.

g. Dispersal Containment Preparations

1. DoD with DOE and FBI support will have primary responsibility for dispersal containment preparations.

2. DoD/EOD and DOE personnel will develop, with FBI support, any required containment apparatus for explosive and radiological matter.

h. Device Deactivation

1. DoD/EOD, with FBI and DOE support, will have the primary responsibility for device deactivation.

2. DoD/EOD and DOE personnel will develop suitable render safe procedures.

3. DoD/EOD personnel will perform the approved deactivation procedures. DoD/EOD, FBI, and DOE personnel will work in close cooperation to achieve the deactivation of the device.

i. Post Incident Operations

1. The FBI, with support of DOE, DoD and other Federal, state and local authorities will have primary responsibility for post-incident operations.

2. DoD/EOD and DOE personnel will work closely with, and in support of, the FBI in the preservation of evidence.

3. DOE and DoD will arrange for any special transportation of nuclear material in coordination with the FBI.

4. The FBI will request assistance from DOE, DOD, and appropriate civilian agencies for post-incident cleanup.

j. Major Emergency or Disaster. In the event of a major emergency or disaster, DOE will assist in the response to post-incident cleanup requirements in coordination with the DoD and various civilian agencies as provided for under other agreements. DOE will have assistance from the DoD as provided for in the March 1, 1977, DoD and DOE Agreement in Response to Accidents - Incidents Involving Radioactive Material or Nuclear Weapons.

VII. Emergency Assistance Expense. DoD, DOE, and the FBI will each fund for the costs which they incur in providing the equipment and services required to meet their responsibilities defined in this agreement. Any reimbursements which may subsequently be agreed upon by the undersigned in furtherance of this agreement will be in accordance with the Economy Act, 31 U.S.C. 8. This agreement takes effect on the last date of signature shown below:

Duane C. Sewell
Duane C. Sewell, Assistant Secretary
for Defense Programs, DOE

2-27-80
(Date)

David M. Mullaney
David M. Mullaney, Brig Gen, USAF
Deputy Assistant to the Secretary
of Defense (Atomic Energy)

29 Feb 1980
(Date)

William H Webster
William H. Webster, Director
Federal Bureau of Investigation

21 Feb 1980
(Date)

Appendix A

Definitions and Abbreviations

Improvised Nuclear Device (IND) - Any nonconventional explosive device containing nuclear or radioactive material combined with explosives.

Nuclear Threat Incident - Any situation involving stolen, lost, or unauthorized possession of source materials, special nuclear materials, radioactive by-products, nuclear weapons/devices of U.S. and/or foreign manufacture, improvised nuclear devices, radioactive dispersal devices, or the threatened use of said items.

Explosive Ordnance Disposal (EOD) - The detection, identification, field evaluation, rendering-safe, recovery, and final disposal of Unexploded Explosive Ordnance (UXP).

National Military Command Center (NMCC) - Centralized controlling and notification point to activate and coordinate DoD activities.

Working Point - The area immediately surrounding the device.

Special Nuclear Material - The term special nuclear material means (1) plutonium, uranium enriched in the isotope-233 or in the isotope-235, and any other material which DOE, pursuant to the provisions of section 51 of the Atomic Energy Act, as amended, determines to be special nuclear material, but does not include source material or (2) any material artificially enriched by any of the foregoing, but does not include source material.

Senator **Mathias**. Any further statement that either of you gentlemen would like to make?

Mr. **Burnett**. No.

Mr. **Wade**. No.

Senator **Mathias**. If not, we will hold the record open for 2 weeks for your additional statements and for the responses from Secretary Kennedy. Thank you for being with us.

The subcommittee will stand adjourned, subject to the call of the Chair.

[Whereupon, at 10:56 a.m., the subcommittee was adjourned.]

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